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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
FOR THE COUNTY OF YAVAPAI

2011 DEC -6 AM 11:47 ✓

SANDRA K HARKHAM, CLERK

*Stephanie Kling*

STATE OF ARIZONA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JAMES ARTHUR RAY, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. V1300CR201080049

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE WARREN R. DARROW  
TRIAL DAY NINETEEN  
MARCH 22, 2011  
Camp Verde, Arizona

**ORIGINAL**

REPORTED BY  
MINA G. HUNT  
AZ CR NO. 50619  
CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
2 FOR THE COUNTY OF YAVAPAI

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4 STATE OF ARIZONA, )  
5 Plaintiff, )  
6 vs ) Case No V1300CR201080049  
7 JAMES ARTHUR RAY, )  
8 Defendant. )  
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15 BEFORE THE HONORABLE WARREN R DARROW  
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24 REPORTED BY  
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1 Proceedings had before the Honorable  
2 WARREN R. DARROW, Judge, taken on Tuesday,  
3 March 22, 2011, at Yavapai County Superior Court,  
4 Division Pro Tem B, 2840 North Commonwealth Drive,  
5 Camp Verde, Arizona, before Mina G. Hunt, Certified  
6 Reporter within and for the State of Arizona.  
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## PROCEEDINGS

(Proceedings continued outside presence of jury.)

THE COURT: The record will show the presence of the defendant, Mr. Ray, the attorneys. The jury is not present. This is the time set to discuss legal matters, specifically the proposed testimony of an expert, Mr. Pace. And just for purposes of trial management, that's an issue that needs to be dealt with. And I look at that in terms of a motion in limine.

And so I think, Mr. Li, you should proceed.

MR. LI: Thank you, Your Honor. Good morning.

THE COURT: Good morning.

MR. LI: The first thing is I won't repeat a lot of the argument that we've already made. But at issue here is whether or not testimony related to certain risk management practices are admissible in a case where no legal duty has been identified and impose those risk management practices.

In particular, Your Honor, if I may approach, just so we're all very clear on what we're discussing here, I'm going to approach with Mr. Pace's report so that it's clear that -- I

think the state already has a copy.

THE COURT: And this was attached to a disclosure --

MR. LI: Yes.

THE COURT: -- that I saw.

MR. LI: Yes, Your Honor. Thank you. I just want to make sure that we all have it in front of each other.

I would direct the Court's attention to the first sentence, essentially, which is, in order to review the overall safety of an organization and the activities it conducts, one needs to scrutinize the overall risk management plan that the organization has put into place to ensure the well-being of its participants and the quality of its program.

And then the report goes on to state various things that -- you know -- Mr. Pace believes should be in any outdoor adventure program, including a medical screening, all sorts of other -- you know -- areas that Mr. Pace believes should be in a program.

Now, the state contends that his testimony is admissible to show that JRI or Mr. Ray in particular somehow fell beneath those standards

in a criminal fashion. And that is the issue here is whether or not those sorts of -- this sort of testimony is admissible in a criminal case as opposed to a civil case.

Just to go back very quickly about the law. I think that the main problem with the testimony is that it continues to inflate civil liability with criminal liability. And I've already discussed with the Court some of the basic elements required in order to find that -- an omission, which is what the state, essentially, alleges -- the failure to have a defibrillator, the failure to have -- you know -- what they believe would be a better risk management plan, et cetera, all of those sorts of omissions.

The way that an omission can be used against an individual is only if under the criminal law there is an identified beyond dispute clear duty under the criminal law that the individual do something.

And I will very quickly read two quotes from two separate cases. One is Angelo. That's the tax return case we discussed. And in that case -- that's at 166 Arizona, and this is at page 27. An omission to act can only be a crime if

there is a duty to act imposed by law. Because in this case, the tax returns, the officers had no underlined express duty. Quote, they cannot be charged with the omission to perform that duty and be criminally liable for the failure to file the return.

Another case which was cited by the Far West case with approval is a New Jersey case entitled -- sorry.

THE COURT: Is it Lisa?

MR. LI: Lisa. Correct.

THE COURT: I needed the cite on that too if you have that.

MR. LI: I do. I just have a copy of it. If I could bring it up.

THE COURT: Does the state have that cite in this case?

MR. HUGHES: Mr. Li, could give us the cite or a copy?

MR. LI: Yes. I will give you the cite.

The cite is 919 A.2d 145. And the case is from 2007.

THE COURT: Thank you.

MR. LI: I only have one copy. May I approach with it?

1 THE COURT: That's okay. I'm able to get this  
2 quickly.

3 MR. LI: Okay. This case is cited with  
4 approval by the Far West case. And it states that  
5 to the extent that New Jersey, quote, seeks to  
6 incorporate principles derived from civil common  
7 law, it, quote, does not provide sufficient notice  
8 to satisfy prevailing standards of  
9 constitutionality adequate procedural due process.  
10 And that's at page 160.

11 A duty of care upon which a duty to act  
12 is premised must be so firmly established as to be  
13 beyond controversy or dispute if it is to provide  
14 presumed notice. And the Court noted that we  
15 failed to see how these civil common law principles  
16 could provide adequate notice to justify a criminal  
17 charge.

18 And the Court went on to state, in this  
19 case, the duty charged by the state, the Court  
20 concluded, was based on amorphous concepts of the  
21 restatement as reflected in some civil cases and  
22 thereby failed the fundamental test of due process  
23 notice.

24 So it has been critical from day one in  
25 this prosecution that to the extent the state wants

10

1 to premise criminal liability on a purported  
2 omission, that the state identify a specific,  
3 clear-as-day duty under the Arizona law that  
4 requires some sort of action on the part of Mr. Ray  
5 individually, the failure of which would, then,  
6 impose criminal liability.

7 THE COURT: All right. And I just want to ask  
8 in that regard, Mr. LI, did you see the state's  
9 recent memorandum?

10 MR. LI: I did.

11 THE COURT: Okay.

12 MR. LI: And I'll address that quickly.

13 THE COURT: All right.

14 MR. LI: And so that's the groundwork. That's  
15 just the background that we've sort of laid out in  
16 our motions, in our various arguments; and frankly  
17 two separate motions, one related to Mr. Pace and  
18 one related to sort of the overall area about  
19 whether first-aid kits and the like are -- you  
20 know -- questions about that are admissible.

21 And we've made our various arguments. I  
22 don't think there is any dispute that that's what  
23 the law actually is. And I think any review of the  
24 cases establishes that.

25 Now, the state has filed a pleading

1 yesterday. And they again failed to identify any  
2 legal duty Mr. Ray owed the decedents. The duties  
3 the state cites are either legally barred or  
4 plainly inapposite to Mr. Ray.

5 I'll start with one. I think the first  
6 thing identified is that the duty is simply to not  
7 violate the recklessness provisions of Arizona law.  
8 That has explicitly been found by Arizona courts  
9 not to supply a duty.

10 In fact, in State v. Brown, the very case  
11 that the state cites, the Court says in the case of  
12 negligent homicide or manslaughter, the duty must  
13 be found outside the definition of the crime  
14 itself.

15 THE COURT: We were discussing that last week;  
16 am I right?

17 MR. LI: Yes.

18 And the state devotes a fair amount of  
19 time in its pleadings to say that, in fact, the  
20 recklessness statute is the statute that supplies  
21 the duty to Mr. Ray. There is a case directly on  
22 point that rebuts that legal claim, which is,  
23 frankly, just simply incorrect.

24 The second legal duty that the state  
25 purports to supply is an employer-employee duty.

12

1 And even assuming that such a duty provided some  
2 form of criminal liability, it would only apply to  
3 the company. Nobody is making any allegation nor  
4 can someone make the allegation that any employee  
5 or anybody who is working on behalf of JRI was  
6 working on behalf of Mr. Ray personally.

7 I mean, it's beyond dispute that there is  
8 a company. The company puts on these events and  
9 seminars. The company provides all the paperwork.  
10 There is a whole infrastructure to the company.  
11 There is 27 employees.

12 And the fact that the state has cited a  
13 case in which -- you know -- the employer-employee  
14 relationship might create some sort of duty only  
15 proves our point, which is that the only duty flows  
16 between the employer, JRI, and the employee,  
17 whoever that person might be, not an agent,  
18 officer, or, frankly, employee. Mr. Ray is also an  
19 employee of JRI.

20 The third duty that the -- the purported  
21 duty that the state cites is the landlord -- or the  
22 business proprietor's duty to keep his premises  
23 reasonably safe. It's beyond dispute that the  
24 premises here were not owned by Mr. Ray, but they  
25 were, in fact, owned by Angel Valley.

1 And so to the extent that there is any  
2 landlord-invitee relationship, that relationship  
3 only exists between Angel Valley and the people who  
4 have been invited onto Angel Valley. You cannot  
5 take that duty and then superimpose it onto  
6 somebody who's actually rented it.

7 Now, Mr. Hughes cites one exception,  
8 which is that if there is the affirmative knowledge  
9 that there is some defect on the land, then there  
10 might be some ability to impose a liability onto  
11 the renter. Okay. But the defect in this case  
12 would have to be something wrong with the land,  
13 something wrong with the premises.

14 And as the Court is well aware, one of  
15 the arguments that we're making here and we believe  
16 is, in fact, the case is that there may have been  
17 some sort of toxins and that the -- but we'll never  
18 find out because the site was destroyed -- you  
19 know -- less than 48 hours after the incident.

20 There is no allegation on the part of the  
21 state nor can there ever be an allegation on the  
22 part of the state that somehow JRI or Mr. Ray or  
23 somebody could have been aware of some sort of  
24 toxins or something like that in the soil, in the  
25 wood, in Lord knows what at Angel Valley. That

1 liability cannot be imposed upon Mr. Ray as an  
2 individual.

3 So the problem that the state has done  
4 here is they've, essentially, sought to introduce  
5 all sorts of evidence that, essentially, are  
6 purported omissions under a purported standard of  
7 care.

8 They've supplied no duty whatsoever that  
9 requires -- no explicit duty under the criminal law  
10 that requires that an individual in Mr. Ray's  
11 position do any of these things.

12 There isn't a single case out there or  
13 statute or anything that requires an officer of a  
14 company conducting outdoor activities to have a  
15 defibrillator or to have a more robust first aid  
16 kit or to have different sort of risk-management  
17 practices.

18 We submit that all of the things that  
19 Mr. Pace discusses are probably good ideas for  
20 outdoor, Bound and NOLS and all of these various  
21 outdoor activities. We're not disputing that some  
22 of these might be good ideas. We would contend  
23 that a lot of these things were done by JRI.

24 All that said, it's irrelevant because  
25 none of -- there is no statute anywhere that

1 requires Mr. Ray as an individual in a criminal  
2 prosecution to do any of those things. And as a  
3 consequence, there is no due process or notice that  
4 failure to do any of those things would result in  
5 criminal charges, specifically manslaughter  
6 charges.

7 And so that's the problem that the state  
8 faces, and their pleading, Your Honor, with all due  
9 respect, fails in all respects. It, essentially,  
10 says that, well, actually this is an action.

11 Mr. Ray is liable because he committed an  
12 affirmative act rather than an omission. Well, if  
13 that's the case, then none of Mr. Pace's testimony  
14 is relevant. None of it has anything to do with  
15 action. It all has to do with what he believes  
16 is -- that an outdoor program should have. And  
17 so -- you know -- if that's their theory, then  
18 Mr. Pace's testimony is irrelevant.

19 And then with respect to the omissions,  
20 that is, the purported failures to have certain  
21 procedures in place, they failed to identify any  
22 duty. And as a consequence, Your Honor, we believe  
23 that Mr. Pace's testimony should be excluded.

24 THE COURT: Thank you, Mr. Li.  
25 Mr. Hughes.

1 MR. HUGHES: Thank you, Your Honor.

2 Your Honor, although I don't think it  
3 makes any difference, but the document Mr. Li  
4 provided you is a draft of Mr. Pace's report. The  
5 part that Mr. Li highlighted is the same as the  
6 actual report, which has Bates No. 6700.

7 MR. LI: Your Honor, I'll approach with a copy  
8 of that one as well.

9 THE COURT: Okay.

10 MR. LI: It wasn't clear to us which one  
11 constituted disclosure.

12 MR. HUGHES: The issue, Your Honor, I believe,  
13 really is what Mr. Li touched on at the very end,  
14 which is, is Mr. Pace's testimony relevant to the  
15 issue of Mr. Ray's conduct.

16 In determining Mr. Ray's conduct, you  
17 have to look at the reasonable-person statute,  
18 which is part of the manslaughter statute. And  
19 that reasonable-person statute talks about the risk  
20 must be of such nature and degree that disregard of  
21 such risk constitutes a gross deviation from the  
22 standard of conduct that a reasonable person would  
23 observe in the situation.

24 In the Far West case, the state was  
25 permitted to bring an expert in to testify about

1 what a reasonable person would observe or would do  
2 in the situation. Now, Far West dealt with a  
3 situation where an employer and also some of the  
4 managerial agents of the employer were being  
5 prosecuted for crimes that they committed,  
6 including their acts and also including their  
7 omissions or violations of duty.

8 In the memorandum that the state filed  
9 yesterday, I was trying to illustrate that a  
10 prosecution for manslaughter can be brought solely  
11 on a person's act. In other words, there is no  
12 requirement under a manslaughter prosecution that a  
13 defendant violate a duty of any form. And I gave a  
14 number of examples of published appellate cases  
15 where the prosecution and the appellate opinion  
16 were based on acts by a defendant.

17 That's one of the theories that are being  
18 brought forward in this case is that Mr. Ray's act  
19 in running that sweat lodge, particularly in light  
20 of the testimony that we've heard, constituted  
21 recklessness.

22 As I also pointed out in the memorandum  
23 that was filed yesterday, a prosecution for  
24 manslaughter can be premised on a violation of a  
25 duty. And that was one of the situations in the

1 Far West case. Also in the Brown case it talked  
2 about a duty that a person can owe can be found in  
3 the common law.

4 I realize Mr. Li has cited the Lisa case  
5 from another state. I would submit that the Lisa  
6 case is contradicted by Arizona's case law, which  
7 is very clear. In particular, the Brown case is  
8 very clear that a duty can be founded upon the  
9 common law.

10 And in this particular case, I gave in  
11 the memorandum several duties, one of them that a  
12 proprietor owes to patrons. Mr. Li's attempting to  
13 distinguish that by saying, well, in this case  
14 Mr. Ray was, first of all, an employee of JRI. I  
15 think that argument is addressed by 13-306 and the  
16 cases that I cited about 306 -- or not the case.  
17 But it was a horn book on 13-306 that addressed  
18 that.

19 It says that a managerial agent cannot  
20 hide behind the corporate veil when his own acts  
21 are responsible for committing the crime in  
22 addition to the acts of the corporation.

23 And I think 13-306 needs to be used as  
24 the lens when you're looking at the duties and the  
25 failure to perform those duties that Mr. Ray owed

1 to the victims with respect to proprietor.

2 We've heard testimony that Mr. Ray was  
3 the one, basically, running the show as far as the  
4 sweat lodge, determining the amount of heat, the  
5 amount of rocks, when the door could open and when  
6 the door couldn't open, telling people when they  
7 could leave or when they couldn't leave. He can't  
8 hide behind the corporate veil for his own acts in  
9 that regard.

10 And the duty as a proprietor to provide a  
11 safe place to the customers also is not removed  
12 simply because Mr. Ray was in that land and the  
13 land was owned by Angel Valley. Mr. Ray was,  
14 essentially, renting the land from Angel Valley to  
15 provide the sweat lodge.

16 There will be testimony that the sweat  
17 lodge was constructed by Angel Valley at Mr. Ray's  
18 request and that it was constructed solely for use  
19 by Mr. Ray running the sweat lodge ceremony. The  
20 fact that Angel Valley also had an interest in the  
21 land doesn't negate the fact that Mr. Ray had an  
22 interest as well by virtue of the contractual  
23 agreement he had with Angel Valley.

24 So that's one duty that he owed to all of  
25 the customers, the patrons, and the people who were

1 there, the business invitees.

2 In addition, Liz Neuman is in a special  
3 situation because she's an employee, a gratuitous  
4 employee to go along with it. She was  
5 volunteering. But when you look at that two-part  
6 test, Ms. Neuman falls squarely within the two-part  
7 test. She was working for Mr. Ray, subject to his  
8 instruction and his direction.

9 You heard testimony that when she didn't  
10 do something that Mr. Ray thought she should have  
11 done, i.e., the no alcohol, she got chewed out by  
12 Mr. Ray.

13 I think that also goes to show that not  
14 only was there the JRI issue, but under 13-306,  
15 there is Mr. Ray's liability directly to Liz  
16 Neuman. He's the person who is acting as that high  
17 managerial agent with respect to Liz Neuman.

18 And so to sum it all up, Your Honor, with  
19 respect to Mr. Pace, he's going to provide  
20 testimony, which Far West says is appropriate in a  
21 criminal case, as to what a reasonable person  
22 should do.

23 That testimony is relevant, not only to  
24 the duties that are outlined in the memorandum as  
25 filed yesterday, but it's also relevant to what a

1 reasonable person should do with respect to  
2 Mr. Ray's conduct.

3 Mr. Li argued that Mr. Pace is going to  
4 talk about what an organization should do. And I  
5 would agree that his report is styled in order to  
6 review the overall safety of an organization and  
7 the activities it conducts.

8 Mr. Pace's testimony in this case will  
9 not be focused on JRI. It's going to be focused on  
10 what the leader of that organization, in other  
11 words, the 13-306 actor, should do or should not do  
12 in the case of running an adventure program.

13 And it goes far beyond the providing of  
14 medical kits and having an ambulance on scene.  
15 Although that's some of what's required, there are  
16 other things such, as sitting down and doing safety  
17 reviews. After the incidents in prior years,  
18 Mr. Ray should have done safety reviews and gone  
19 over with his employees the things that they should  
20 have learned and the things that should be done  
21 differently.

22 There are other requirements in that  
23 draft and also in the final completed report of  
24 things that Mr. Ray should have done as a  
25 responsible leader of an organization.

1 For those reasons, Your Honor, Mr. Pace  
2 should be allowed to provide testimony to the jury  
3 of what a reasonable person in Mr. Ray's situation  
4 should have done.

5 Thank you.

6 THE COURT: Thank you, Mr. Hughes.

7 Mr. Li.

8 MR. LI: Your Honor, just quickly, on one of  
9 the statutes provided by Mr. Hughes, 13-306, is  
10 applicable only to affirmative acts and not to  
11 omissions. This doesn't create an additional duty.  
12 It explicitly relates only to affirmative acts.

13 I think the critical thing is this:  
14 Far West cites with approval the Lisa case that I  
15 discussed. It quotes, basically, what I read to  
16 the Court here. And the point is that absent an  
17 explicit legal duty, you cannot impose criminal  
18 liability on an individual for an omission.

19 Everything that Mr. Hughes said is --  
20 once again demonstrates this conflation, this sort  
21 of mushing between civil liability, corporate  
22 liability, and what the cases, such as Angelo, say,  
23 which is in order to impose an individual  
24 liability, you better identify a specific duty that  
25 applies. The state has not done so.

1 I would just, for the record, say again  
2 that it is not a duty explicitly so under Arizona  
3 law not to commit criminal recklessness. So every  
4 case that the state cites involving people shooting  
5 guns in people's faces and such, those are all  
6 irrelevant for purposes of this analysis.

7 The common law duties cited, No. 1, it's  
8 not clear that Arizona law recognizes imposing  
9 criminal sanctions for the violation of common law  
10 duties. The Angelo case seems to suggest that it  
11 has to be explicitly stated in a statute. And the  
12 state cites no -- absolutely no precedent for the  
13 opposite.

14 But even if the common law duties that  
15 the state is citing here apply, they apply to the  
16 wrong party. With respect to the employer-employee  
17 relationship, it applies to JRI, not to Mr. Ray  
18 personally. It would be -- you know -- Mr. Hughes  
19 is the employee of a large company or a large  
20 organization and failures on the part of Yavapai  
21 County Attorney's Office -- you know -- omissions  
22 and the like, relate to the company, to his  
23 employer, not to Ms. Polk.

24 Similarly, the landlord-invitee duty --  
25 the common law landlord-invitee duty that the state

1 cites, even assuming, which we don't concede --  
2 even assuming that Arizona law recognizes that such  
3 a duty -- a criminal duty could arise out of that,  
4 that duty runs between the invitees and Angel  
5 Valley.

6 Nobody is trying to hide behind anything.  
7 But the point is that in order for the state to  
8 bring a criminal prosecution based on omissions,  
9 they've got to identify a real duty. They can't  
10 construct one out of -- you know -- out of vague  
11 concepts and arguments.

12 They have to actually have a duty.  
13 They've never identified one. And as a  
14 consequence, Mr. Pace's testimony is irrelevant.  
15 Frankly, all of the testimony relating to first-aid  
16 kits and the like we maintain is irrelevant.

17 THE COURT: I've already ruled with regard  
18 to 2009. The presence of those items or absence of  
19 those items just relates to what was going on at  
20 that time. I think the question with regard to  
21 Mr. Pace and the larger issue of is negligence type  
22 evidence permissible in a reckless manslaughter  
23 case. That's the issue that I see right now. And  
24 there is no summary judgment procedure in a  
25 criminal case in Arizona. So we are strictly

1 talking about what is potential relevant evidence.

2 Mr. Hughes, I think this is a related  
3 argument. Your disclosure now includes a  
4 suggestion that conducting of the Samurai Game  
5 would be relevant, whether it was authorized.  
6 There was a 15.6 notice on that and motion.

7 You know what I'm talking about.

8 MR. HUGHES: Yes, sir.

9 THE COURT: And I think that's related to the  
10 issue here. And at the end of the motion, there is  
11 just a statement that the question of Mr. Ray  
12 properly conducting those games is relevant to the  
13 charge of manslaughter.

14 How would it be.

15 MR. HUGHES: Your Honor, I think the defense  
16 has made the way the defendant conducted that game  
17 relevant through their questions to the witnesses.  
18 They've opened the door, essentially, to that area  
19 by asking questions along the lines of, well, did  
20 you know that Mr. Ray runs this game and it's the  
21 same game that the Disney Corporation runs and the  
22 U.S. military runs? And maybe they said IBM or  
23 some of the other companies.

24 The fact that he's not licensed to run  
25 the game and that the testimony here on how he's

1 running the game, we believe, is going to differ  
2 from how an authorized facilitator of the game  
3 should run it, I think, is relevant because the  
4 defense has made that issue relevant.

5 If they hadn't of gone down that line of  
6 questioning with the witnesses, then it would be  
7 different. But they did go down that line.  
8 They've left the impression now in the jury's minds  
9 that the way Mr. Ray runs his game is the same way  
10 that Disney and the U.S. military and all these  
11 other really prominent -- AT&T and these other  
12 prestigious corporations run the game.

13 Certainly the game in and of itself is  
14 relevant because it affected the participants and  
15 the victims' overall mental state once they entered  
16 the sweat lodge.

17 But the specific issue of was he licensed  
18 and is he running this game the same way that it's  
19 supposed to be run or the same way other  
20 corporations that are licensed to run it runs the  
21 game has been something that the defense has  
22 created through that line of questioning.

23 They didn't have to go down the line of  
24 saying is this the same game that Disney runs? For  
25 example, are you aware that Disney does this game

1 also? The fact that the game that Mr. Ray calls  
2 the "Samurai Game" happens to have some  
3 similarities and the same name as what Disney is  
4 doing or AT&T is doing or the U.S. military, I  
5 think, now is fair for the jury to explore that  
6 through testimony that we can put on.

7 So that's where that issue has come from  
8 is the defendant creating that -- what we believe  
9 is a misimpression that this is the same game and  
10 runs substantially the same way.

11 THE COURT: I see that as a related issue  
12 because there may be this tendency to just have  
13 propensity type evidence out there. And if you  
14 pull back to the charge, it's recklessness. It's a  
15 very specific charge that actually has an element  
16 of knowing in it.

17 It's a conscious disregard. And bringing  
18 in these other things that don't really go directly  
19 to that, whether it's some omission that might be  
20 made in running an outdoor program. And I see the  
21 concepts as related, and they are of concern. The  
22 issue is somewhat different.

23 Mr. Li, I think you may have wanted to  
24 address the point that I brought up about the  
25 recent disclosure.

1 MR. LI: Yes, Your Honor. I mean, obviously  
2 we'll deal with that in a separate pleading. And  
3 we're not here to litigate that particular issue.

4 Two points I wanted to make. One is  
5 that -- I wrote it here but I didn't say it -- to  
6 the extent that the state is now alleging that  
7 Mr. Pace is going to talk about something different  
8 than what's in his report, we claim that's a  
9 disclosure violation.

10 The second is that -- you know -- this  
11 entire issue about the Samurai Game, as the Court  
12 will recall from the beginning, the defense has  
13 questioned the relevance of that. And we have  
14 argued repeatedly that we think it is an attempt to  
15 introduce propensity evidence and, essentially,  
16 introduce evidence against -- in violation of 403.

17 We understand the Court's ruling, and  
18 we've abided by it. When this case began, as the  
19 Court will recall, there were many, many questions  
20 of the various witnesses that sort of went along  
21 these lines. And then Mr. Ray commanded somebody  
22 to die; isn't that correct? Things like that, this  
23 entire sort of almost sensationalizing of this what  
24 I would just call a silly corporate game into some  
25 sort of death cult.

1 And there were lots of conversations with  
2 witnesses about after you had been commanded to die  
3 by Mr. Ray, were you dragged to the graveyard?  
4 Those sorts of things.

5 And so the argument that somehow the  
6 defense in an attempt to clear up the fact that  
7 this is not part of a death cult but this is  
8 actually just a corporate exercise that most people  
9 who participated in thought was silly or at least  
10 recognized clearly that it was all pretend.

11 The fact that we are simply trying to  
12 clear up the misimpression that the state brought  
13 into this case, which we've always claimed is  
14 propensity evidence and in violation of 403, that  
15 that somehow opened the door to now bringing in  
16 somebody who is going to say, well, we've licensed  
17 the Samurai Game, and this is how we play it; and  
18 if Mr. Ray plays it differently, that is not okay,  
19 this will be the subject of a separate motion.

20 But it simply defies -- you know -- our  
21 sense of justice that the state can sit here and  
22 make that argument having made numerous what we  
23 consider improper questions, numerous arguments, in  
24 front of the jury -- essentially, arguments in  
25 front of jury that this was some part of cultic

1 exercise as opposed to what it is, which is just a  
2 silly team-building exercise similar to many other  
3 silly team-building exercises.

4 MR. HUGHES: Your Honor, if I could address  
5 just a couple of points. First of all, with  
6 respect to the defense's argument that they're  
7 responding to some sort of misleading or improper  
8 testimony about the Samurai Game, I'd note that the  
9 defense first brought that issue up about Disney  
10 Corporation and U.S. military in his opening  
11 argument before there was -- any testimony had been  
12 put on.

13 And, again, the defense chose to bring up  
14 the fact that this is supposedly the same game that  
15 other corporations have used. If they had limited  
16 their examination to what the game involved, eggs  
17 on spoons, and that sort of thing, it would be  
18 different. But they went down the road as to who  
19 else is using what they are calling the same game  
20 as what Mr. Ray was doing.

21 With respect to claiming a discovery  
22 violation, Far West and all the cases talk about a  
23 corporation acts through its employees. And  
24 certainly 13-306 recognizes that also, that  
25 employees are liable for the their own conduct.

1 Mr. Pace's report, which talks about what  
2 an organization should do, the defense, I don't  
3 think with a straight face, can argue that  
4 organization in that case did not mean its high  
5 managerial agent. And the only high managerial  
6 agent in this corporation is Mr. Ray.

7 So just to say that Mr. Pace's testimony  
8 is somehow limited just to what an organization  
9 does overlooks the fact that organizations that  
10 are -- although they're a real person in one sense,  
11 they act through its employees.

12 And the Far West case spent some time  
13 talking about the high managerial agents. And one  
14 of the codefendants was the actual owner of the Far  
15 West Corporation in that case.

16 THE COURT: Thank you.

17 I'm going to look over the cases, read  
18 the Lisa case specifically, and issue something in  
19 writing that will be in the context of Mr. Pace's  
20 proposed testimony. I think that's a good way to  
21 capture and focus the concern.

22 I wanted to talk about trial scheduling.  
23 I think we're going to get a jury question this  
24 morning having to do with the list of witnesses.  
25 If you will recall, during the voir dire I

1 mentioned at one point I was going to provide a  
2 list of witnesses to the jurors. That was because  
3 of the number of names.

4 I thought if they could actually see  
5 them, if there was any possibility they might  
6 recognize somebody rather than reading 70 names or  
7 how many I read, they could actually see them.

8 But apparently one of the jurors has  
9 asked the bailiff about having that list,  
10 remembering that I had said that. And Ms. Rybar,  
11 of course, instructed them, put the question in  
12 writing so that it could be addressed with the  
13 attorneys.

14 If you recall, I decided not to give them  
15 the list after I talked to both the parties and you  
16 didn't think it was necessary because these people  
17 did not live locally and the chances of anybody  
18 knowing any of these people was so remote.

19 I have a feeling -- I don't know this.  
20 It's speculation -- that the concern with the  
21 witness list is they're adding -- this juror is  
22 adding up how many witnesses have testified and how  
23 many might testify in the future and saying,  
24 goodness, the Judge read all these. How many are  
25 there? And we've now heard how many? Nine or 10

1 witnesses.

2 So I do want to talk about trial  
3 scheduling. One of the defense attorneys raised  
4 that on Friday. I can say that the examinations by  
5 both sides are lengthy. There have been  
6 objections, and they're dealt with as they come up.  
7 But Mr. Hughes and Ms. Polk, Mr. Li, Mr. Kelly, I  
8 do want to talk about trial scheduling.

9 I had permitted a break in the trial  
10 really with the understanding there was a good  
11 chance the trial would not get to the point of that  
12 hiatus. But where does that stand?

13 Mr. Hughes and Ms. Polk.

14 And I want the defense to address that as  
15 well.

16 MS. POLK: Your Honor, the -- first of all, I  
17 agree with the Court that what was given to the  
18 jury was a pretty lengthy list of names. I made it  
19 clear in my opening to the jury that obviously we  
20 weren't going to call everybody who was at the  
21 scene because they were so numerous.

22 I don't see a problem with finishing on  
23 time. We are constantly looking at the list of  
24 witnesses, making determinations about whether or  
25 not that information has come in through another

34

1 witness, and do we still need that witness. Beyond  
2 that, I don't feel a concern that we will be able  
3 to finish on time.

4 THE COURT: Okay.

5 Mr. Kelly, you raised this point last  
6 week.

7 MR. KELLY: Judge, I believe our concern is  
8 simply one of mathematics; that is, if my  
9 calculations are correct, the government has almost  
10 finished it's ninth witness. Ms. Polk provided to  
11 us a list of the proposed witnesses this week,  
12 which totals five. So nine and five is 14. We  
13 also -- and I asked this specific question last  
14 Friday: Do you still intend to call 70-plus  
15 witnesses? And the answer was yes. And so doing  
16 the simple math, we can't make it by June 10.

17 I have my own opinion as to the relevance  
18 of some of the evidence that's been proffered by  
19 the State of Arizona. And I will say that many  
20 times the direct examination forces a strategy  
21 decision on behalf of the defense as to how long  
22 our cross-examination is because we don't know  
23 whether what you had for breakfast the day after  
24 the event closed is somehow creating some  
25 impression of the mind -- in the minds of the juror

1 that needs to be cleared up on cross-examination.  
2 So I understand that our cross has perhaps been  
3 more lengthy than we anticipated.

4 As you stated, Judge, I thought that this  
5 case was going to be completed by the May break  
6 that you've identified. That was my original  
7 opinion. In fact, I have even set some jury trials  
8 at the end of May in some other divisions believing  
9 that to be true.

10 And it's largely because we had thought  
11 that the crucial inquiry in this case in terms of  
12 relevance is what had happened in the sweat lodge  
13 and not all these other topics that have been  
14 discussed by various motions.

15 Regardless of that, Judge, as I stand  
16 here today, I understand you're ruling last Friday.  
17 I made some representations in court yesterday  
18 based on that, that I would be done by June 10.  
19 And it's kind of a simple math problem. I don't  
20 see how that's going to happen in an eight-hour  
21 day.

22 Now, Ms. Polk has said she's going to cut  
23 back on some witnesses, and obviously we can make  
24 it a point to not have as many witnesses. But by  
25 the end of this week, I believe we will have used

36

1 about a third of your time with 14 witnesses. And,  
2 of course, we need a couple of days for the defense  
3 case.

4 THE COURT: With regard to the anticipated  
5 juror question, if it comes, I don't plan on giving  
6 them the list of witnesses. I think I just  
7 explained that that was a list of possible  
8 witnesses and the reason for having that was to  
9 give them a chance to identify people and that  
10 wasn't really necessary. I don't plan on giving  
11 them any list of witnesses.

12 Ms. Polk?

13 MS. POLK: Thank you.

14 THE COURT: Mr. Li?

15 MR. LI: That's fine, Your Honor.

16 THE COURT: All right. Then I do have one  
17 other matter. And we should start pretty close to  
18 9:15, I think.

19 MR. LI: Thank you.

20 (Recess.)

21 (Proceedings continued in the presence of  
22 jury.)

23 THE COURT: The record will show the presence  
24 of the defendant, Mr. Ray, the attorneys, and the  
25 jury. And the witness, Ms. Gennari, has returned

1 to the witness stand and is under oath, of course.

2 And, Mr. Li, you were cross-examining?

3 MR. LI: Thank you, Your Honor.

4 CROSS-EXAMINATION (Continued)

5 BY MR. LI:

6 Q. Good morning, Ms. Gennari.

7 A. Morning.

8 Q. Now, let's talk a little bit about before

9 the sweat lodge, if we could. People were told

10 repeatedly to hydrate?

11 A. Over that morning. Yes.

12 Q. Over the whole seminar; correct?

13 Hydrate, hydrate, hydrate?

14 A. I only remember that morning.

15 Q. You only remember that morning?

16 A. I only remember those words on that

17 morning.

18 Q. And you don't remember Mr. Ray saying

19 hydrate, hydrate, hydrate for the rest of the

20 seminar?

21 A. Not that particular set of words.

22 Q. What about drink water?

23 A. There was a comment about -- I do recall

24 something about making sure we were drinking

25 water --

1 Q. Okay. But what --

2 A. -- before that. But the chant hydrate,  
3 hydrate, hydrate I only remember from the morning  
4 of the sweat lodge.

5 Q. Okay. Let me phrase it differently,  
6 then.

7 A. Uh-huh.

8 Q. Did Mr. Ray ask you to drink water from  
9 the beginning of the seminar on?

10 A. Up until we were told we couldn't have  
11 any, yes.

12 Q. Okay. So from the moment you arrived at  
13 Angel Valley at the retreat, Mr. Ray asked you to  
14 drink water, whatever words he used, to ask you to  
15 do that; correct?

16 A. I believe so.

17 Q. Repeatedly; correct?

18 A. I couldn't say if it was repeatedly for  
19 that period of time.

20 Q. Now, just focussing for a second on just  
21 the tent and all of those things relating to the  
22 sweat lodge.

23 If I could have Exhibit 145 up on the  
24 projector -- which is in evidence.

25 Ms. Gennari, you will recall that before

1 you went into the sweat lodge, there were

2 Dream Team members and other volunteers stationed

3 outside the sweat lodge?

4 A. I don't remember that.

5 Q. Okay. Does this picture refresh your

6 recollection that there were people stationed

7 outside the sweat lodge?

8 A. I never saw the view looking like that.

9 I saw lots of people milling around with all of us

10 there. I'm really not aware that there were

11 people, quote, unquote, stationed anywhere.

12 Q. Okay.

13 A. I don't know.

14 Q. You wouldn't have any reason to believe

15 that there were not people stationed on the

16 outside -- Dream Team members?

17 A. No reason to believe they were or  
18 weren't.

19 Q. Okay.

20 A. I have no recollection.

21 Q. Other than this photograph?

22 A. Exactly.

23 MR. LI: Sir, if we could look at Exhibit 146,  
24 which is also in evidence.

25 Q. So this is another photograph, which is

1 also in evidence. Do you recall seeing anything  
2 like this?

3 A. No.

4 Q. But you don't have any reason to believe  
5 that this isn't an accurate depiction of what was  
6 going on in the sweat lodge?

7 A. I have no idea.

8 Q. Now, there were buckets and hoses to cool  
9 people off when they came out?

10 A. I know I was hit by water from a hose. I  
11 didn't actually see those things.

12 Q. So you were hit with water from a hose;  
13 correct?

14 A. That I could tell.

15 Q. So would you deduce that, then, there was  
16 a hose?

17 A. There was at least one hose.

18 Q. Okay. And then, secondly, I believe that  
19 on direct examination you testified you were --  
20 some water was poured on you from a bucket as well?

21 A. Somebody poured water over me. It could  
22 have been a bucket, a cooler. I don't know.

23 Q. Okay. Some sort of device that carries  
24 water --

25 A. Something. Yes.

1 Q. -- like a bucket --  
 2 A. **Could be.**  
 3 Q. -- that might have been poured on you;  
 4 correct? Is that correct?  
 5 A. **I don't know. Some sort of water**  
 6 **carrying device. Sure.**  
 7 Q. Okay. And it, in fact, cooled you off;  
 8 correct?  
 9 A. **The water from the hose cooled me off.**  
 10 **The water from the bucket went up my nose and made**  
 11 **me almost stop breathing.**  
 12 Q. The water up the nose --  
 13 A. **Yes.**  
 14 Q. -- made you almost stop breathing?  
 15 A. **That was very unpleasant.**  
 16 Q. Yeah.  
 17 A. **Yes.**  
 18 Q. I can imagine. But when you say "stop  
 19 breathing," do you mean it almost killed you?  
 20 A. **No. It went into my sinuses and was**  
 21 **extremely painful is what I mean.**  
 22 Q. Okay. So it was extraordinarily  
 23 unpleasant?  
 24 A. **Yes.**  
 25 Q. But did it stop you from breathing?

1 A. **For the time water was going up my nose,**  
 2 **absolutely.**  
 3 Q. Okay. I just want to make sure we're  
 4 talking about the same thing. So it was very  
 5 unpleasant. But it didn't almost kill you, did it?  
 6 A. **No.**  
 7 Q. Okay. Now, outside of the sweat lodge  
 8 there was a recovery station. Do you remember  
 9 that?  
 10 A. **No.**  
 11 MR. LI: Ask that Exhibit 281, which is in  
 12 evidence.  
 13 Q. There was electrolytes and water. You  
 14 don't recall seeing that?  
 15 A. **I never saw it.**  
 16 Q. When you were walking into the sweat  
 17 lodge around the tent, did you not see it --  
 18 A. **I didn't see it --**  
 19 Q. -- off to your left?  
 20 A. **-- no.**  
 21 Q. Okay.  
 22 If I could look at Exhibit 282.  
 23 And you didn't see the fruit that was  
 24 there as well?  
 25 A. **No.**

1 Q. Now, you had testified on direct that  
 2 there were Dream Team members stationed at the four  
 3 cardinal -- I'm sorry -- corners of the sweat  
 4 lodge; correct?  
 5 A. **Inside.**  
 6 Q. Inside. And so Liz Neuman, for instance,  
 7 was seated between you and Laura Tucker?  
 8 A. **Yes.**  
 9 Q. If I could have Exhibit 414.  
 10 And we've had this oriented many, many  
 11 different ways during the course of this trial.  
 12 Let's just keep it this way for now. You were --  
 13 if you could just mark where you were.  
 14 A. **I was about here.**  
 15 Q. And Ms. Neuman --  
 16 A. **She would have been --**  
 17 Q. -- right at about the 9:00 o'clock  
 18 position in this orientation?  
 19 A. **Yes.**  
 20 Q. And there was another Dream Team member  
 21 at the 12:00 o'clock orientation?  
 22 A. **As I recall, people were told to go sit**  
 23 **in the north, east, and west. So I didn't see**  
 24 **them.**  
 25 Q. So if you could mark what you mean by

1 that.  
 2 A. **People were told to sit at these points.**  
 3 MR. LI: And for the record, Ms. Gennari  
 4 marked the 12:00 o'clock position and the  
 5 3:00 o'clock position.  
 6 Q. And Mr. Ray was seated to the --  
 7 depending on how you're looking at it, to the --  
 8 right about there; is that correct?  
 9 A. **Yes.**  
 10 Q. So there were people from the company  
 11 posted at each of the cardinal positions?  
 12 A. **Yes.**  
 13 Q. And prior to the sweat lodge, Mr. Ray had  
 14 suggested to you -- not to you, but to everybody  
 15 that it would be a good idea to get close to the  
 16 ground; correct?  
 17 A. **I don't recall.**  
 18 Q. In fact, he had said that you have to  
 19 stay close to the ground where it's cooler?  
 20 A. **I don't recall.**  
 21 Q. Okay. If there were a tape recording of  
 22 him saying that to the group, you wouldn't have any  
 23 reason to dispute the accuracy of that tape  
 24 recording, would you?  
 25 A. **No.**

1 Q. All right. And you, in fact -- and I'll  
2 get back to this in a bit. You, in fact, did put  
3 yourself close to the ground; correct?  
4 A. Yes.  
5 Q. And you dug your fingers into the dirt;  
6 correct?  
7 A. Yes.  
8 Q. And it was cooler closer to the ground,  
9 wasn't it?  
10 A. In my first place.  
11 Q. In your first position where you spent  
12 approximately seven rounds, it was much cooler  
13 there; correct?  
14 A. Yes.  
15 Q. And by "there," I mean close to the  
16 ground.  
17 A. Yes.  
18 Q. Now, prior to the sweat lodge ceremony,  
19 Mr. Ray also told you, so if you have to leave,  
20 then you need to leave; correct?  
21 A. There was more to that. We were told to  
22 leave between rounds.  
23 Q. Yes. But just on the one question that I  
24 asked you, did he say if you have to leave, then  
25 you need to?

1 A. Between rounds.  
2 Q. Okay.  
3 A. It's not --  
4 Q. I understand that. But if we could  
5 just -- just answer the --  
6 A. It's not accurate unless you --  
7 Q. So if there's a --  
8 THE REPORTER: One at a time, please.  
9 MR. LI: I'm sorry.  
10 Q. Go ahead.  
11 A. It's not accurate unless you add that we  
12 were supposed to leave only between rounds.  
13 Q. Okay. Did he say if you have to leave,  
14 then you need to? And you're right here. You  
15 can't duck out this way. You have to go all the  
16 way around and go out the lodge when the gates are  
17 open. If you have to leave, you leave. And you  
18 leave very, very -- in a controlled manner, very  
19 carefully because there is legs and it's dark.  
20 There is legs, there is knees, and there is elbows.  
21 And -- you know -- the last thing we want is anyone  
22 in the pit.  
23 Do you remember him making that  
24 statement?  
25 A. It sounds familiar.

1 Q. You have no reason to dispute that that  
2 was a statement that Mr. Ray made to the whole  
3 group; correct?  
4 A. No.  
5 Q. And that's, in fact, what you did when  
6 you left the lodge; correct?  
7 A. Yes.  
8 Q. You went out in a controlled manner?  
9 A. As controlled as pure, blind panic can  
10 be.  
11 Q. Okay. You didn't rush for the door, did  
12 you?  
13 A. I rushed for the door in a clockwise.  
14 Q. You were -- I did the math this weekend.  
15 I tried to figure it out what A squared plus B  
16 squared -- you know -- that equals C squared  
17 equation. And if this is 23 feet, the whole thing,  
18 then the diameter is about 12 feet, 11 and a half  
19 feet; correct?  
20 A. The radius?  
21 Q. The radius. Yes. You're the math major.  
22 Sorry. The radius is about 11 1/2 feet, give or  
23 take?  
24 A. Okay.  
25 Q. And so then the radius going the other

1 way is also 11 1/2 feet, give or take?  
2 A. Close enough. I think the pit was off  
3 center a little.  
4 Q. So then this what they call -- what is  
5 it? -- the hypotenuse --  
6 A. Uh-huh.  
7 Q. -- is about 15 feet, give or take?  
8 A. I can't do it in my head right this  
9 second.  
10 Q. Okay. Well, I tried to do it in my head,  
11 and I had to get a calculator. It's about 15  
12 feet -- would you agree with me? -- approximately.  
13 A. I suppose.  
14 Q. And so 15 feet is from about, say,  
15 probably me to you?  
16 A. Roughly.  
17 Q. Okay. So instead of going those 15 feet  
18 right out the door -- or probably even a little  
19 less because you were closer; right?  
20 A. A little bit.  
21 Q. So instead of going those -- let's call  
22 it 13 or 14 feet straight out the door, you went  
23 all the way around; correct?  
24 A. Yes.  
25 Q. And that was in part because you were

1 told to go out the door -- if you're going to go  
2 out the door, go out in a controlled manner  
3 clockwise?

4 **A. Yes.**

5 **Q.** Now, I want to talk to you quickly about  
6 the Vision Quest. We had spent a little time  
7 talking about it on Friday. And I wanted to -- I  
8 had a chance to go back and look at the transcript  
9 of your direct examination, and I wanted to ask you  
10 a few questions about that.

11 On your direct examination you were  
12 asked, how did you feel about the Vision Quest?  
13 And do you remember replying, I got hungry? I got  
14 dizzy? I got a headache? My body was just not  
15 happy with no food?

16 Do you remember saying that?

17 **A. Yes.**

18 **Q.** And then on cross-examination I asked you  
19 some more questions about your experience in the  
20 Vision Quest. Do you remember that?

21 **A. Vaguely.**

22 **Q.** Okay. Well, I was asking you questions  
23 and -- let me just ask you this: Did you know that  
24 I was reading from an interview transcript that you  
25 had done with Detective Willingham?

1 **A. Yes. I remembered it about the third  
2 time you read it.**

3 **Q.** Okay. So you were interviewed by  
4 Detective Willingham from the Yavapai County  
5 Sheriff's Office on October 27, 2009?

6 **A. Probably. I can't verify the date. But  
7 yes.**

8 **Q.** Okay.

9 **A. I remember talking.**

10 **Q.** And you understood that when a detective  
11 calls you about a case, it's involving a criminal  
12 investigation; correct?

13 **A. Yes.**

14 **Q.** And you knew it was important to give  
15 that detective complete and full information;  
16 correct?

17 **A. Yes.**

18 **Q.** Because, frankly, three people had passed  
19 away and there was a criminal homicide  
20 investigation going on; right?

21 **A. Yes.**

22 **Q.** And you knew you had a duty to tell the  
23 detective the truth, the whole truth, and nothing  
24 but the truth?

25 **A. As much as I could pull out of my brain**

1 **at that point, yes.**

2 **Q.** And you knew that Detective Willingham  
3 tape-recorded that statement?

4 **A. Yes.**

5 **Q.** In fact, you have -- well, let me ask  
6 you. Have you reviewed your statement a few times  
7 before you came to court?

8 **A. Quickly. Yes.**

9 **Q.** How many times?

10 **A. Probably twice.**

11 **Q.** Twice?

12 **A. Yes.**

13 **Q.** Okay. During that interview on  
14 October 27th that was tape-recorded, you did not  
15 say to the detective that I got hungry. I got  
16 dizzy. I got a headache. My body was just not  
17 happy with no food. You did not say that?

18 **A. I don't think so.**

19 **Q.** You were asked about the Vision Quest?

20 **A. Yes.**

21 **Q.** You were asked about what you ate and  
22 drank?

23 **A. I was asked what I ate and drank. Yes.**

24 **MR. LI:** I'd ask that we play Exhibit 644 at  
25 2445 through 2627.

1 And for the state, this is at the  
2 transcript, page 13, lines 2 through 24.

3 **MS. POLK:** Your Honor, this is not in  
4 evidence.

5 **MR. LI:** This is just impeachment, Your Honor.

6 **THE COURT:** And this is the statement you just  
7 examined concerning --

8 **MR. LI:** Correct.

9 **THE COURT:** Overruled.

10 You may play that.

11 **MR. LI:** Thank you.

12 **MS. POLK:** Counsel, could we have a page  
13 number, please?

14 **MR. LI:** Yes. It is page 13, lines 2 through  
15 24.

16 (Exhibit 644 played.)

17 **MR. LI:** Thank you.

18 **Q.** So you told detective -- that was you on  
19 the tape, wasn't it?

20 **A. Yes.**

21 **Q.** Okay. You told Detective Willingham that  
22 you had read the release -- that form that  
23 described the events?

24 **A. Yes.**

25 **Q.** You told her that it was an opportunity

1 to spend time in the desert without food and water?  
 2 A. Yes.  
 3 Q. You told her that you thought it was  
 4 going to be hard?  
 5 A. Yes.  
 6 Q. You told her that you were actually fine?  
 7 A. Yes.  
 8 Q. You told her -- and then she asked  
 9 whether you were hungry or not. And you said,  
 10 yeah. I might be hungry. And then I'd go back to  
 11 writing in my journal and I'd forget. And, like,  
 12 oh, yeah. I might be hungry. And then I'd go back  
 13 to writing in my journal. And the sun went down  
 14 and I said okay. Bedtime.  
 15 A. Yes.  
 16 Q. And you said then you crawled into your  
 17 sleeping bag?  
 18 A. Yes.  
 19 Q. And then you told the detective, the next  
 20 morning, when they came to get you -- you said, I  
 21 thought -- I was almost disappointed. And I  
 22 thought, oh. I could have used another day. It  
 23 was so nice out here.  
 24 A. Yes.  
 25 Q. And then Detective Willingham asked

1 you -- she sort of suggested to you, yeah -- you  
 2 know -- that you needed a little food and water.  
 3 Remember hearing her say that?  
 4 A. Yes.  
 5 Q. And you rejected that. And you said, I  
 6 didn't even care at that point about food and  
 7 water. I was just kind of enjoying my time and  
 8 watching birds and writing in my journal and really  
 9 just sort of getting into it.  
 10 A. Yes.  
 11 Q. You said that to Detective Willingham;  
 12 correct?  
 13 A. Yes.  
 14 Q. Now, let's talk a second about a few of  
 15 the events that you've participated in. You said  
 16 on direct that you participated in about five other  
 17 JRI events before Spiritual Warrior; correct?  
 18 A. **Something like that. Yes.**  
 19 Q. Harmonic Wealth?  
 20 A. Yes.  
 21 Q. Quantum Leap?  
 22 A. Yes.  
 23 Q. Creating Absolute Wealth?  
 24 A. Yes.  
 25 Q. Modern Magick?

1 A. Yes.  
 2 Q. Practical Mysticism?  
 3 A. Yes.  
 4 Q. Now, would you agree with me that some of  
 5 the material was useful to you and some wasn't?  
 6 A. **At the time I thought so.**  
 7 Q. That you thought some of it was useful to  
 8 you?  
 9 A. Yes.  
 10 Q. Did you also think at the time that some  
 11 of it wasn't useful to you?  
 12 A. Yes.  
 13 Q. I'm going to jump ahead. We'll get to  
 14 this in a second. But I'm going to jump ahead.  
 15 You currently don't think any of it was useful to  
 16 you?  
 17 A. **I'm currently having trouble finding much**  
 18 **useful information.**  
 19 Q. Okay. But at the time there were things  
 20 that you thought were useful in these seminars --  
 21 A. **At the time.**  
 22 Q. -- because you continued to go to them?  
 23 A. Yes.  
 24 Q. And spend whatever time it takes to get  
 25 there; correct?

1 A. Yes.  
 2 Q. Whatever time out of your job; correct?  
 3 A. Yes.  
 4 Q. Whatever money it costs to travel there?  
 5 A. Yes.  
 6 Q. And the days and time it takes to  
 7 actually participate?  
 8 A. Yes.  
 9 Q. And you personally made the decision to  
 10 go to those seminars; correct?  
 11 A. Yes.  
 12 Q. Nobody made you?  
 13 A. No.  
 14 Q. Mr. Ray didn't make you go, did he?  
 15 A. **There is a complicated question.**  
 16 Q. He didn't force you to go?  
 17 A. No.  
 18 Q. I mean, we did this on Friday. But you  
 19 took one foot and put it in front of the other and  
 20 you walked into the car, the plane, whatever, and  
 21 you attended these seminars; correct?  
 22 A. Yes.  
 23 Q. And you paid your own money?  
 24 A. Yes.  
 25 Q. And let me ask you this: You decide for

- 1 yourself how you spend your money; correct?
- 2 **A. Yes.**
- 3 **Q.** Nobody is telling you how to spend your
- 4 money; correct?
- 5 **A. No.**
- 6 **Q.** No one tells you what kind of car to buy?
- 7 **A. No.**
- 8 **Q.** No one tells you where to live?
- 9 **A. No.**
- 10 **Q.** Nobody tells you what to wear?
- 11 **A. You haven't met my mother.**
- 12 **Q.** Okay. Besides your mother no one else
- 13 tells you what to wear?
- 14 **A. Yes.**
- 15 **Q.** And nobody tells you what to read?
- 16 **A. No.**
- 17 **Q.** Nobody tells you where to work?
- 18 **A. No.**
- 19 **Q.** Nobody forced you to sign up to Mr. Ray's
- 20 courses; correct?
- 21 **A. There was no gun to my head.**
- 22 **Q.** Okay. So nobody forced you to sign up
- 23 for Mr. Ray's courses; correct?
- 24 **A. Yeah.**
- 25 **Q.** Now, did you read any of Mr. Ray's books?

- 1 **A. Yes.**
- 2 **Q.** Which one or ones?
- 3 **A. I read Practical Mysticism, and I think I**
- 4 **finally got around to reading Harmonic Wealth.**
- 5 **Q.** Okay. And did you buy them on Amazon or
- 6 something like that?
- 7 **A. I don't know.**
- 8 **Q.** Did you yourself purchase them?
- 9 **A. Yes.**
- 10 **Q.** Did anybody make you purchase them?
- 11 **A. No.**
- 12 **Q.** Did anyone make you read them?
- 13 **A. No.**
- 14 **Q.** You read a lot of books?
- 15 **A. Yes.**
- 16 **Q.** And nobody makes you read one book versus
- 17 another; correct?
- 18 **A. No.**
- 19 **Q.** Now, on Friday you -- I believe you
- 20 testified that Mr. Ray was a bit of a bully?
- 21 **A. Yes.**
- 22 **Q.** That you said he would shoot people down
- 23 when they got up on the mic?
- 24 **A. Yes.**
- 25 **Q.** That he'd yell at people?

- 1 **A. Yes.**
- 2 **Q.** That he'd intimidate them?
- 3 **A. Yes.**
- 4 **Q.** And you said on direct that listening to
- 5 him was, basically, him telling everyone what to
- 6 do?
- 7 **A. Yes.**
- 8 **Q.** You said that you just wanted to stay out
- 9 of his way at the very --
- 10 **A. Mostly.**
- 11 **Q.** I'm sorry. I interrupted.
- 12 **A. Mostly.**
- 13 **Q.** Not get shot down?
- 14 **A. Yeah.**
- 15 **Q.** You, basically, said that he was some
- 16 kind of tyrant?
- 17 **A. I don't think I went that far.**
- 18 **Q.** Would you say that now?
- 19 **A. Yes.**
- 20 **Q.** That he ranted and raved?
- 21 **A. Yes.**
- 22 **Q.** That he once bellowed at you?
- 23 **A. Yes.**
- 24 **Q.** Now, I have actually checked the
- 25 transcript from Friday of your direct examination

- 1 with Ms. Polk, and we had a little confusion when
- 2 we were asking questions.
- 3 And the question is, on direct
- 4 examination I believe you said you were afraid to
- 5 take the mic when it was open-mic time. I believe
- 6 the question was, Ms. Polk asked you did you say --
- 7 sorry. Did you ever get up and speak? This is at
- 8 the Spiritual Warrior 2009. And I believe your
- 9 answer was no. And there is another question. Why
- 10 not? And the answer was, I'm not the
- 11 get-up-and-speak kind of person.
- 12 Do you remember saying that?
- 13 **A. I'm actually very glad you brought that**
- 14 **up. Because I wanted to clarify something about**
- 15 **that.**
- 16 **Q.** I'm just going to ask you if you remember
- 17 saying that. And then I'll let you --
- 18 **A. Yes.**
- 19 **Q.** -- clarify that in a second. Okay?
- 20 **A. Yes.**
- 21 **Q.** Do you remember saying that?
- 22 **A. Yes.**
- 23 **Q.** Okay. And then on cross-examination you
- 24 told me that you had not said that?
- 25 **A. Yes.**

1 Q. Okay.

2 A. **And that's what I'd like to clarify.**

3 Q. Okay. And I will absolutely promise you

4 in a couple of questions you can have at it. Okay?

5 So on cross-examination you told me that

6 you had not said that you -- not said that;

7 correct? Let me rephrase that.

8 On cross-examination I asked you if you

9 got up and spoke.

10 A. **Yes.**

11 Q. Do you remember that?

12 A. **That is what you asked me.**

13 Q. And on -- and your answer was that you

14 had not -- that you did. I'm totally messing this

15 up. Okay. So let me start again.

16 A. **I'm confused.**

17 Q. Let me start from the top.

18 Okay. On direct examination Ms. Polk

19 asked you, did you ever get up and speak? And you

20 answered no. Do you remember that?

21 A. **Yes.**

22 Q. On cross-examination I asked you, did you

23 get up and speak on the open mic? And you said

24 that you had.

25 A. **Yes. And that's what I'd like to**

1 **clarify.**

2 Q. Okay. So you would agree with me that

3 those are two different ideas; correct?

4 A. **And I realized that because the rest of**

5 **the story in my head had not come out my mouth,**

6 **that is confusing.**

7 Q. Okay. But you would agree with me these

8 are two separate --

9 A. **What came out --**

10 Q. -- statements?

11 A. **-- was two separate statements.**

12 Q. Okay.

13 A. **Yes.**

14 Q. And please tell us what the explanation

15 is.

16 A. **When we had been talking about people**

17 **getting -- standing up and being shot down, the**

18 **picture in my head was of previous events, large**

19 **hotel ballrooms, hundreds of people, somebody**

20 **standing up to ask a question and being shot down.**

21 **And from that picture in my head, I said, no. I**

22 **never did that. Because in a hundred people -- you**

23 **know, five-, 600-people ballroom, no. Not in a**

24 **million years. And those are all lumped together**

25 **in one bucket in my head.**

1 **And Spiritual Warrior, which was about, I**

2 **don't know, 50, 60 people in a small room that felt**

3 **more like summer camp where we sat down with the**

4 **microphone. To me that was a completely -- still**

5 **difficult for me. But it wasn't the insurmountable**

6 **obstacle that standing up in front of hundreds of**

7 **people was then.**

8 **So I answered the first question from the**

9 **first bucket in my head of large ballrooms. And**

10 **no. I wouldn't do that. But at Spiritual Warrior**

11 **when we were a much more intimate group and**

12 **smaller, then I actually did push myself to take**

13 **the mic because I was so confused by the result of**

14 **that exercise. But make no mistake, I remained**

15 **seated.**

16 Q. Okay. I think I understand now. We had

17 a bit --

18 A. **They were different in my head. And so I**

19 **answered from different places. And I'm glad you**

20 **brought it up because it occurred to me over the**

21 **weekend that those were not clear with my words as**

22 **they were in my head.**

23 Q. Okay. So we had a miscommunication,

24 basically?

25 A. **Yes.**

1 Q. And so you did, in fact, pick up the mic

2 at Spiritual Warrior --

3 A. **Yes.**

4 Q. -- and speak?

5 A. **Yes.**

6 Q. Now, you did that voluntarily; correct?

7 A. **Yes.**

8 Q. Nobody forced you?

9 A. **No.**

10 Q. Let's go back to your characterization as

11 Mr. Ray as a tyrant and a bully. Is it your

12 testimony that Mr. Ray was abusive to the

13 participants, including you?

14 A. **At times.**

15 Q. Now, let's go back to your interview on

16 October 27, 2009, with Detective Willingham. You

17 did not say that Mr. Ray was a bully and a tyrant

18 or that he was abusive to the participants then,

19 did you?

20 A. **I don't believe we talked about it.**

21 Q. Well, in fact, you described him in quite

22 affectionate terms almost?

23 A. **I don't recall. This has been quite the**

24 **journey of figuring out a lot of things in my head**

25 **in the last year and a half.**

1 MR. LI: I'd like to play Exhibit 644 at 5712  
2 through 35.

3 And the page number, Ms. Polk, is  
4 page 28.

5 (Exhibit 644 played.)

6 MS. POLK: Pursuant to 106, I would ask that  
7 the context be provided.

8 MR. LI: Your Honor, the only issue is whether  
9 or not she described Mr. Ray in positive terms and  
10 that -- did not call him a bully or a tyrant. And  
11 this is only impeachment. If the state believes  
12 that it has an evidentiary basis to play anything  
13 else, they can do that on redirect.

14 THE COURT: Ms. Polk, 613(b) will be followed.  
15 And that does allow for an explanation if that's  
16 part of it. So if that's appropriate as  
17 explanation, 613(b) would permit that on redirect.

18 MS. POLK: Thank you.

19 Q. BY MR. LI: Now, in that interview you  
20 did not say Mr. Ray was a tyrant and a bully, did  
21 you?

22 A. No.

23 Q. You did not say he was abusive to the  
24 participants, did you?

25 A. No.

1 Q. In fact, you said that he needed to get  
2 over himself?

3 A. Yes.

4 Q. You said that as you were listening, you  
5 would hear great information, great information.  
6 Oh, come on, dude. Get over yourself.

7 A. Yes.

8 Q. And then you said great information,  
9 great information. Oh, yeah. Get over yourself.

10 A. Yes.

11 Q. So, in other words, there was some  
12 information that was great. And sometimes when  
13 you're sitting in the seminars that you thought  
14 Mr. Ray needed to get over himself?

15 A. Yes. At the time.

16 Q. Understood. At the time. And you said  
17 that it was like having a big dog that comes over  
18 and slobbers on you; correct?

19 A. At the time that's how I characterized  
20 it.

21 Q. Okay. And you would agree with me, would  
22 you not, that a big dog that comes over and  
23 slobbers on you is not the same thing as a tyrant  
24 or an abusive bully; correct?

25 A. Correct.

1 Q. It's just a big, sloppy dog?

2 A. Yes.

3 Q. And you said that you would put up with  
4 this because he is a nice big dog; correct?

5 A. At the time that's what I thought.

6 Q. Okay. You did not say that you would put  
7 up with a big, abusive, tyrannical, bully dog, did  
8 you?

9 A. Nobody wants to believe that of  
10 themselves.

11 Q. But you didn't say that, did you?

12 A. I did not. No.

13 Q. And just so we're clear, then, on  
14 October 27, 2009, when you're speaking to a  
15 detective from the Yavapai County Sheriff's Office,  
16 you didn't accuse Mr. Ray of mind control or  
17 something like that, did you?

18 A. I don't -- I don't recall the entire  
19 conversation.

20 Q. Okay. And you didn't accuse him of being  
21 abusive and bullying, did you?

22 A. I don't think so.

23 Q. Okay. Fair to say that, basically, as  
24 you sit here today, you think that all of Mr. Ray's  
25 material is, at least for you, useless?

1 A. Mostly.

2 Q. And, basically, not your cup of tea?

3 A. Pretty much.

4 Q. Now, I'm going to talk a little bit more  
5 about Friday's testimony. On Friday you testified  
6 that you were impacted and unable to make your own  
7 decisions because of the breathwork. Do you  
8 remember that?

9 A. Well, because of a number of factors, the  
10 breathwork being one.

11 Q. The breathwork being one of them. And  
12 this is when you lie down and breathe really fast  
13 and you, basically, hyperventilate?

14 A. Yes.

15 Q. And it makes you dizzy?

16 A. Yes.

17 Q. Were you deprived of rational thought by  
18 the fact that you were dizzy?

19 A. Somewhat.

20 Q. Okay. Now, isn't it the case that you  
21 told Detective Willingham about this breathwork  
22 exactly that anything happened, all I had to do was  
23 stop doing it and I'd float back to normal.

24 Do you remember saying that?

25 A. Yes.

1 Q. And that was true; correct?  
 2 A. **That was what I thought.**  
 3 Q. That if anything was happening that you  
 4 didn't like, all you had to do was stop doing it  
 5 and you'd float back to normal?  
 6 A. **That was what I believed. Yes.**  
 7 Q. With respect to the breathwork?  
 8 A. **Yes.**  
 9 Q. Okay. Now, we also talked about  
 10 meditation.  
 11 A. **Uh-huh.**  
 12 Q. And you also suggested up to us on Friday  
 13 that the two-hour sessions of meditation, as  
 14 opposed to the one-hour sessions, impacted you and  
 15 made you unable to make your own decisions.  
 16 Do you recall that testimony?  
 17 A. **It made me a little dizzy. Yes.**  
 18 Q. Okay. It made you spacey?  
 19 A. **Yes.**  
 20 Q. And did Mr. Ray force you to meditate?  
 21 A. **It was part of the program.**  
 22 Q. Okay. I'm going to --  
 23 A. **I'm going to go back to at the time I was**  
 24 **following my instructions for the program.**  
 25 Q. Were you forced to meditate?

1 A. **Again, that's very complicated. I don't**  
 2 **feel like I was -- I don't feel like I -- how do I**  
 3 **explain this?**  
 4 **I was there to follow the program. I**  
 5 **paid enormous piles of money to be there. I was**  
 6 **trying to get as much as possible out of it. And,**  
 7 **therefore, I participated in everything that was**  
 8 **presented.**  
 9 Q. Okay. Fair enough. But Mr. Ray did not  
 10 force you to meditate, did he?  
 11 A. **He put it in the program, and that was my**  
 12 **mind-set. Follow the program.**  
 13 Q. Okay. Well, let me flip it around, then.  
 14 So is it your testimony that because Mr. Ray put it  
 15 in the program, he forced you to meditate?  
 16 A. **I just don't think that's the right word.**  
 17 Q. "Forced" is not the right word?  
 18 A. **In either direction.**  
 19 Q. Now, you did not tell  
 20 Detective Willingham on October 27 that you had  
 21 been forced to meditate, did you?  
 22 A. **I don't know.**  
 23 Q. And, in fact, what you told her was right  
 24 after you discussed the breathwork, you said, and  
 25 the same thing with meditating, it was like, no.

1 This is getting too weird. And all I'd have to do  
 2 is open my eyes and look around the room and I'd be  
 3 back to myself.  
 4 Do you remember saying that?  
 5 A. **I don't recall. But I could have.**  
 6 Q. Would it refresh your recollection to  
 7 look at a transcript of your statement to  
 8 Detective Willingham?  
 9 A. **Sure.**  
 10 Q. This is page 17, lines 7 through 9. And  
 11 just read it to yourself.  
 12 A. **Yes.**  
 13 Q. Now, do you recall saying to  
 14 Detective Willingham, and the same with meditating?  
 15 It was like, no? This is getting too weird? And  
 16 all I'd have to do is open my eyes and look around  
 17 the room and I'd be back to myself? Again, do you  
 18 remember saying that?  
 19 A. **Yes.**  
 20 Q. And that was, in fact, true, wasn't it?  
 21 All you had to do was open up your eyes and stop  
 22 meditating?  
 23 A. **What I had to do was open up my eyes to**  
 24 **get from weird to something I could deal with.**  
 25 Q. Okay. And stop meditating, basically;

1 correct?  
 2 A. **Yes.**  
 3 Q. You could just open up your eyes and stop  
 4 meditating?  
 5 A. **Yes.**  
 6 Q. We discussed the vegetarian diet on  
 7 Friday. You suggested that the vegetarian diet  
 8 somehow impacted your ability to make decisions.  
 9 Do you recall that?  
 10 A. **Yes.**  
 11 Q. So let's -- I mean -- you know -- I won't  
 12 spend too much time on this. But breakfast,  
 13 basically, they had a buffet; correct?  
 14 A. **Yes.**  
 15 Q. It had oatmeal?  
 16 A. **Yes.**  
 17 Q. Eggs?  
 18 A. **Yes.**  
 19 Q. I just want to make sure. Eggs?  
 20 A. **Yes.**  
 21 Q. Like, scrambled eggs --  
 22 A. **Yes.**  
 23 Q. -- like, in a warming pan?  
 24 A. **Yes. That was our one solid meal.**  
 25 Q. Yeah. And bread?

1 A. Yes.  
 2 Q. Fruit?  
 3 A. I don't remember.  
 4 Q. Okay. No bacon or sausage?  
 5 A. No.  
 6 Q. And for lunch you had cheese, bread,  
 7 fruit, salad, and maybe a casserole?  
 8 A. I don't remember.  
 9 Q. Just no ham sandwiches?  
 10 A. No.  
 11 Q. And dinner you had eggplant casserole,  
 12 bean chili, salads, fruit, bread, cheese?  
 13 A. Yes.  
 14 Q. So -- you know --  
 15 A. I don't remember cheese.  
 16 Q. Okay. But --  
 17 A. I had the green tea.  
 18 Q. A big bean casserole; right?  
 19 A. There were lots of beans and legumes and  
 20 things I don't normally eat.  
 21 Q. Okay. No steak, though?  
 22 A. No.  
 23 Q. And you did not tell Detective Willingham  
 24 on October 27 that this diet of oatmeal, eggs,  
 25 bread, fruit, salad, casseroles, what have you, had

1 rendered you unable to make decisions for yourself,  
 2 did you?  
 3 A. I don't believe so.  
 4 Q. And the entire time you spent on this  
 5 vegetarian diet was probably what? Four days, give  
 6 or take, three days?  
 7 A. Let's see. We got there -- I don't know.  
 8 The days before the Vision Quest and then the days  
 9 after.  
 10 Q. Okay. You told us on Friday that you did  
 11 not drink enough water because you were afraid to  
 12 have to go to the bathroom during classes. Do you  
 13 recall saying that?  
 14 A. Yes.  
 15 Q. And specifically you told us that before  
 16 the sweat lodge, you didn't drink enough water?  
 17 A. I don't think I did.  
 18 Q. But you did talk about food and water  
 19 with Detective Willingham on October 27, 2009, did  
 20 you not?  
 21 A. Yes.  
 22 Q. And you told her that you drank water all  
 23 morning because we kept getting admonished to  
 24 hydrate, hydrate, hydrate?  
 25 A. Yes.

1 Q. Do you remember saying that?  
 2 A. I drank water over the course of the  
 3 morning. I was always careful that it wasn't  
 4 enough that I was running to the bathroom  
 5 constantly.  
 6 Q. Okay.  
 7 A. I was trying to balance that.  
 8 MR. LI: Your Honor, I'm going to play  
 9 Exhibit 644, line 23 -- or time stamp 2338.  
 10 Ms. Polk, it's at page 12, lines 26 --  
 11 sorry. Page 12, lines 14 through 27.  
 12 MS. POLK: Thank you.  
 13 Your Honor, the state objects to the  
 14 showing of the screen.  
 15 MR. LI: Oh.  
 16 THE COURT: Yes.  
 17 MR. LI: Yes. And you understand that that  
 18 weird sort of thing comes --  
 19 (Exhibit 644 played.)  
 20 Q. BY MR. LI: So you had been admonished,  
 21 you kept on getting admonished, to hydrate,  
 22 hydrate, hydrate?  
 23 A. That morning, yes.  
 24 Q. Okay. And is it your testimony that  
 25 Mr. Ray didn't say throughout the seminar to

1 hydrate, hydrate, hydrate?  
 2 A. I don't know. Like I said, I only  
 3 remember that particular little chant from that  
 4 morning.  
 5 Q. Now, I'm not going to spend -- you  
 6 know -- more than a few seconds on the Samurai  
 7 Game. You did mention it in that clip?  
 8 A. Yes.  
 9 Q. And you called it "silly"?  
 10 A. Yes.  
 11 Q. You on direct examination described it as  
 12 getting ugly?  
 13 A. Yes.  
 14 Q. And that there were verbal fights about  
 15 who won?  
 16 A. Yes.  
 17 Q. And that there was a particular ninja who  
 18 stared at somebody, and he thought that that person  
 19 should have died because he stared at him?  
 20 A. Yes.  
 21 Q. Was that Lou Caci was the ninja?  
 22 A. I don't know.  
 23 Q. Was he sort of a -- about six-foot tall,  
 24 dark hair, and glasses?  
 25 A. They all looked the same once they took

1 off their hair.

2 Q. Okay. But he was a --

3 A. He was a guy. That's about the best I  
4 can do.

5 Q. Okay. Now, about the Vision Quest. And  
6 I won't spend much time on this. I asked you on  
7 Friday if you had been forced to write in your  
8 journal. Do you remember that?

9 A. Yes.

10 Q. And you said that you couldn't at night  
11 because it was dark.

12 A. Yes.

13 Q. And you said you, basically, didn't  
14 journal because you just got into your sleeping bag  
15 and went to sleep?

16 A. Well, yeah. I got in my sleeping bag. I  
17 watched the stars. I thought. I sat there -- you  
18 know -- and watched the moon rise and then finally  
19 went to sleep.

20 Q. Okay. And that was on the first night?

21 A. No. That was the second night.

22 Q. The second night. So you had two nights  
23 out in the dessert in a sleeping bag --

24 A. Yes.

25 Q. -- where you could have gone to sleep if

1 you wanted to?

2 A. Yes.

3 Q. And fair to say that you went to bed when  
4 the sun was down, basically?

5 A. I climbed into my sleeping bag when the  
6 sun was down. It was too cold not to.

7 Q. And then you could have closed your eyes  
8 at that point if you wanted to?

9 A. Yeah. As I recall, that second night  
10 when I climbed in, it was way too early for me to  
11 actually go to sleep. So I just sort of -- you  
12 know -- watched the lights and watched the stars  
13 and watched the moon and --

14 Q. It was too early to go to sleep because  
15 it's, like, what? 7:00 or 8:00 o'clock at night?

16 A. Something like that.

17 Q. So you're going to bed at --

18 A. Exactly.

19 Q. -- 8:00 o'clock at night. And then at  
20 some point you go to sleep; right?

21 A. Yes.

22 Q. And then you wake up the next morning at  
23 what? Dawn?

24 A. Well, you wake up every time your body  
25 figures out the ground is too hard lying on it, and

1 then you wake up and wake up and wake up and wake  
2 up. And then you wake up at dawn.

3 Q. Yeah.

4 A. Yeah.

5 Q. Have you gone camping before?

6 A. Yeah.

7 Q. And so we used to call it the 360. You'd  
8 sleep on your back and then you'd sleep on your  
9 side and sleep on your stomach and sleep on your  
10 side and you sleep on your back again.

11 A. Pretty much. I wouldn't have given --

12 Q. Yeah. But, basically, it's like camping;  
13 right?

14 A. Uh-huh.

15 Q. And yeah. It's not the same as sleeping  
16 in a hotel bed with a down comforter?

17 A. Yes.

18 Q. But you're sleeping; correct?

19 A. Yeah.

20 Q. And that's two nights in a row?

21 A. Yes.

22 Q. Now, participants were -- and you chose  
23 to do all of those activities that I described;  
24 correct?

25 A. We can replay this game. I was

1 participating in everything I was given.

2 Q. Okay. And you put one foot in front of  
3 the other; correct?

4 A. Yes.

5 Q. And you did not go to the parking lot,  
6 get in the car, and leave, did you?

7 A. No.

8 Q. You didn't call and get a cab back to  
9 the -- Sedona, did you?

10 A. Obviously not.

11 Q. You didn't get on a plane and go back to  
12 Redwood City, did you?

13 A. Obviously not.

14 Q. Okay. Now, participants were asked to  
15 make choices all week; correct? Cut your hair or  
16 don't cut your hair --

17 A. All right.

18 Q. -- correct?

19 A. That was one.

20 Q. What issues you wanted to work on, that  
21 was up to the participants to decide; correct?

22 A. Within boundaries.

23 Q. Right. It's like -- you know -- we'll do  
24 this again?

25 A. Yeah.

- 1 Q. It's like when you're in college.  
 2 Somebody tells you you need to write -- or high  
 3 school or whatever. You need to write about Huck  
 4 Finn or something like that. And you, as the  
 5 student, can write whatever you want about Huck  
 6 Finn; correct?  
 7 A. Yes.  
 8 Q. And that's what you mean by --  
 9 A. Yeah.  
 10 Q. -- within --  
 11 A. **That's what I mean within boundaries.**  
 12 Q. -- within boundaries; right?  
 13 A. Yes.  
 14 Q. And you guys, you participants, chose who  
 15 your team leaders would be?  
 16 A. **I don't recall how that person --**  
 17 Q. For instance, the domeo, the head of the  
 18 various samurai clans.  
 19 A. **I don't recall how that person was**  
 20 **chosen.**  
 21 Q. And some folks actually chose not to  
 22 participate in the exercises; correct?  
 23 A. **I don't know.**  
 24 Q. You didn't cut your hair?  
 25 A. **I did not.**

- 1 Q. And Dr. Soheyla Marzvaan and her sister  
 2 left the seminar; correct?  
 3 A. **I didn't find that out until after I got**  
 4 **home.**  
 5 Q. Okay. And Elsa Hefstad chose not to  
 6 participate in the sweat lodge ceremony; correct?  
 7 A. **I found that out afterwards too.**  
 8 Q. So people exercised choice not to  
 9 participate; correct?  
 10 A. **They did.**  
 11 Q. Now, let's talk about the sweat lodge for  
 12 a few minutes. And this is about choice. The girl  
 13 next to you, not Liz, but a Hispanic lady --  
 14 A. Yes.  
 15 Q. -- she was sort of whimpering during the  
 16 ceremony?  
 17 A. Yes.  
 18 Q. She said, I hate it. I don't like this.  
 19 I don't like this. Do you remember that?  
 20 A. Yes.  
 21 Q. And the people around her said, you can  
 22 do it? You can do it? You're more than this?  
 23 A. Yes.  
 24 Q. And you exercised choice to say, do  
 25 what's right for you.

- 1 A. **Mostly I wanted her to go away. I found**  
 2 **her whimpering irritating.**  
 3 Q. Okay. You found her whimpering  
 4 irritating.  
 5 A. **I would like to think I was a better**  
 6 **person and was really out for -- you know -- what**  
 7 **she should do for herself. But at the moment it**  
 8 **was just driving me nuts.**  
 9 Q. Okay. And you found her whimpering  
 10 irritating?  
 11 A. Yes.  
 12 Q. So you said, do what's right for you?  
 13 A. Yes.  
 14 Q. And she chose to leave.  
 15 A. **At some point she vanished. So I guess**  
 16 **she did.**  
 17 Q. Okay. And others chose to leave during  
 18 the course of the ceremony?  
 19 A. Yes.  
 20 Q. And you knew you could leave at any time?  
 21 A. **Between rounds.**  
 22 Q. Yeah. But between the rounds you knew  
 23 you could leave?  
 24 A. Yes.  
 25 Q. And many people chose to leave at various

- 1 times during the ceremony?  
 2 A. Yes.  
 3 Q. At one point there was a -- I think you  
 4 called it a "kerfuffle," about a flashlight?  
 5 A. Yes.  
 6 Q. And what you found out is somebody  
 7 scooted out the back of the tent; correct?  
 8 A. **I found that out much later.**  
 9 Q. But somebody chose to scoot out the back  
 10 of the tent?  
 11 A. **Yeah. I found that out from the news**  
 12 **media.**  
 13 Q. Now, you actually described this to  
 14 Detective Willingham as going to a sports camp  
 15 where everyone is cheering you on. Do you remember  
 16 that?  
 17 A. Yes.  
 18 Q. And saying like -- you know -- like in  
 19 the sports camp where all the participants are  
 20 saying you can do it. You can do it; correct?  
 21 A. Yes.  
 22 Q. And that's how you described it to  
 23 Detective Willingham on December 27, 2009?  
 24 A. **Probably.**  
 25 Q. Would it refresh your -- do you want me

1 to show you the transcript?

2 **A. If it's in there, I believe it. I don't**  
3 **recall our conversation word for word.**

4 **Q.** Mr. Ray. He didn't shove you into the  
5 sweat lodge, did he?

6 **A. No.**

7 **Q.** He didn't physically keep you from  
8 leaving, did he?

9 **A. Not physically.**

10 **Q.** He didn't grab you?

11 **A. No.**

12 **Q.** I know you said he bellowed at you.

13 **A. Yes.**

14 **Q.** But he didn't physically restrain you,  
15 did he?

16 **A. Not physically.**

17 **Q.** And when he said -- at the end of the  
18 ceremony when you were about to leave, he didn't  
19 touch you, did he?

20 **A. No.**

21 **Q.** He didn't say he was going to tackle you  
22 if you tried to leave, did he?

23 **A. No.**

24 **Q.** He didn't say he was going to wrestle  
25 with you if you tried to leave?

1 **A. No.**

2 **Q.** He never said he'd hit you or anything  
3 like that if you left?

4 **A. No.**

5 **Q.** He didn't say that to anybody else, did  
6 he?

7 **A. Not that I know of.**

8 **Q.** He didn't -- well, you didn't hear him  
9 say, I'm going to hit you --

10 **A. No.**

11 **Q.** -- if you try to leave?

12 **A. No.**

13 **Q.** He didn't say, I'm going to grab you and  
14 tackle you if you try to leave?

15 **A. No.**

16 **Q.** So if somebody said that he physically  
17 restrained you from leaving, that would be untrue?

18 **A. He didn't have to.**

19 **Q.** Well, I -- let me just -- I understand  
20 what you're position is. But I just want to --

21 **A. Not physically. I was not physically**  
22 **touched.**

23 **Q.** Okay. So if somebody said that he  
24 physically restrained you from leaving, that would  
25 be untrue?

1 **A. Yes.**

2 **Q.** If somebody said that you witnessed him  
3 physically restraining somebody, keeping somebody  
4 from leaving, that would also be untrue?

5 **MS. POLK:** Objection, Judge. Argumentative.

6 **THE COURT:** Overruled.

7 You may answer that.

8 **THE WITNESS:** What was it? Sorry.

9 **Q.** BY MR. LI: No. That's all right. If  
10 somebody said that you witnessed somebody -- that  
11 you witnessed Mr. Ray physically restraining  
12 someone else from leaving, that would be untrue?

13 **A. Yes.**

14 **Q.** Now, have you ever claimed that when you  
15 tried to leave the sweat lodge, Mr. Ray blocked  
16 your passage with threats of offensive touching?

17 **A. No.**

18 **Q.** Have you ever said -- have you ever  
19 claimed that you witnessed Mr. Ray or -- do so to  
20 other participants?

21 **A. No.**

22 **Q.** Have you ever claimed that when you  
23 wanted to leave the sweat lodge, Mr. Ray physically  
24 touched you in an offensive way thereby causing you  
25 injuries and extreme emotional distress?

1 **A. No.**

2 **Q.** Have you ever claimed that Mr. Ray  
3 somehow deprived you of rational thought?

4 **A. I didn't know that until much later.**

5 **Q.** Okay. But have you ever claimed that?

6 **A. Claimed it in what?**

7 **Q.** Have you ever claimed that Mr. Ray  
8 somehow deprived you of rational thought?

9 **A. In what context would I be making this**  
10 **claim?**

11 **Q.** Let me move on. I'll ask you another  
12 question. Have you ever claimed that you were  
13 forced into the sweat lodge?

14 **A. No.**

15 **Q.** Because, in fact, you had not been forced  
16 into the sweat lodge?

17 **A. We walked in.**

18 **Q.** And if somebody said that you had been  
19 forced into the sweat lodge, that would be untrue?

20 **A. True.**

21 **Q.** Now, when we talked on Friday, you told  
22 us you were working for a company; correct?

23 **A. Yes.**

24 **Q.** And you said that that company was going  
25 out of business?

1 **A. Probably.**  
 2 **Q.** Okay. Now, how long have you known that?  
 3 **A. Since about three weeks after the sweat**  
 4 **lodge.**  
 5 **Q.** About three weeks after the sweat lodge.  
 6 And just so we're clear, Mr. Ray doesn't have  
 7 anything to do with the economics of that  
 8 particular company that you're working for?  
 9 **A. No.**  
 10 **Q.** True or false? September 2009, about  
 11 11 months after your tape-recorded interview with  
 12 Detective Willingham, you filed a lawsuit against  
 13 JRI, the company?  
 14 **A. September 2009? Wasn't the sweat lodge**  
 15 **in October of '09?**  
 16 **Q.** Did you file a lawsuit against the  
 17 company?  
 18 **A. Yes.**  
 19 **Q.** Is the case number  
 20 37-2010-00060108-CU-PO-NC?  
 21 **A. I have no idea.**  
 22 **Q.** Is your lawyer Robert Bohn from San Jose,  
 23 California?  
 24 **A. Yes.**  
 25 **Q.** Did you review the lawsuit before it was

1 filed?  
 2 **A. Parts of it.**  
 3 **Q.** So I just want to make it so we're  
 4 absolutely cleared. Okay. You filed a lawsuit  
 5 against JRI, the company; correct?  
 6 **A. Yes.**  
 7 **Q.** Did you review the whole thing before you  
 8 filed it, or did you just file it without caring  
 9 what's in it?  
 10 **A. I went through as much as I could stand**  
 11 **to read.**  
 12 **Q.** Okay. It's about eight or nine pages,  
 13 give or take?  
 14 **A. Yeah.**  
 15 MS. POLK: Your Honor, may we approach?  
 16 THE COURT: Yes.  
 17 Ladies and gentlemen -- well, why don't  
 18 we take the morning recess a little bit early.  
 19 So, ladies and gentlemen, please remember  
 20 the admonition.  
 21 The witness, of course, will remember the  
 22 rule of exclusion.  
 23 And please be ready to come back in at a  
 24 quarter till, about 25 minutes.  
 25 Thank you.

1 (Proceedings continued outside presence  
 2 of jury.)  
 3 THE COURT: Ms. Polk.  
 4 MS. POLK: Your Honor, several issues. First  
 5 of all, pursuant to 15.1, there has been no  
 6 disclosure to the state. That rule makes it clear  
 7 that any evidence the party intends to use must be  
 8 provided to the other side. There has been no  
 9 disclosure of this lawsuit.  
 10 Secondly, the parties with the Court had  
 11 discussed this issue of the lawsuit and whether it  
 12 would be relevant. And at the time, the defense  
 13 had indicated to the state that they did not intend  
 14 to ask the witness we were discussing about the  
 15 lawsuit. And the state believed, perhaps wrongly,  
 16 that the defense would provide notice to the state  
 17 and notice to the Court with an opportunity to  
 18 argue all the issues and resolve all the issues  
 19 surrounding the filing of the lawsuit by any of the  
 20 witnesses.  
 21 The state had no notice. The court, I  
 22 believe, has had no notice. And there are issues  
 23 concerning if a lawsuit is introduced, then what  
 24 can the parties do next? That issue has not been  
 25 resolved. Mr. Li has now opened that door.

1 The state does not have a copy of this  
 2 lawsuit. We do not know the status of the lawsuit,  
 3 whether it's been resolved or not. I can obviously  
 4 find out from the witness. I don't know whether or  
 5 not there is a confidentiality agreement, what this  
 6 witness can talk to you -- can talk about or  
 7 testify about.  
 8 But, again, Your Honor, these were all  
 9 issues that outside the presence of the jury, the  
 10 parties were discussing with the Court. None of  
 11 it's been resolved. No notice to the state that  
 12 the defense intended to ask this witness about the  
 13 lawsuit and no notice to the Court. And here we  
 14 are.  
 15 MR. LI: Your Honor, first of all, we don't  
 16 have any obligation to disclose anything because  
 17 we're not actually introducing it into evidence.  
 18 We did talk about this issue about  
 19 whether or not a lawsuit -- existence of a lawsuit  
 20 is admissible or is relevant in discussing bias and  
 21 motive. We believe it is relevant with respect to  
 22 this witness who has testified one way on tape  
 23 right after the incident and sues, and now her  
 24 testimony is quite different. We are allowed to  
 25 impeach her about this.

1 Moreover -- you know -- just on the sort  
2 of disclosure issue, Your Honor, we had a long  
3 conversation about this several weeks ago. It is  
4 the state's obligation to find Brady. And the fact  
5 that a witness has a bias is Brady. And it is not  
6 the defense's obligation to find Brady. We do so  
7 because we're diligent.

8 But if I were the state and I were going  
9 to call a witness, I would want to know, hey. Have  
10 you filed -- particularly in a case like this, hey.  
11 Have you filed a lawsuit? What have you said in  
12 the lawsuit? Do you want money? These are all  
13 issues that go directly to the credibility of the  
14 witness and that are all -- those responsibilities  
15 about finding out those issues and disclosing them  
16 to the defense are all duties that fall squarely on  
17 the state.

18 THE COURT: Ms. Polk.

19 MS. POLK: Your Honor, yes. In response,  
20 first of all, it's not the state's obligation to go  
21 find Brady. The state's Brady obligation is to  
22 provide to the opposing party all information that  
23 is in our possession or our control.

24 These lawsuits are not in the state's  
25 possession or control. We don't know about them.

1 The defendant knows about them because he's a party  
2 to them. And so the statement to the Court that  
3 it's the state's obligation to go find Brady and  
4 disclose it is simply false. Our obligation is to  
5 disclose what is in our possession or control.

6 Rule 15.1 -- I'm sorry -- 15.2(c)(3) says  
7 that the defendant shall provide to the state a  
8 list of all papers, documents, photographs, and  
9 other tangible objects that the defendant intends  
10 to use at trial. There is no exception there for  
11 public records, for example. If the defendant  
12 intends to use it at trial, they have to provide it  
13 to the state.

14 Mr. Li is reading from a document. He's  
15 obviously reading from a document. And that's the  
16 same thing as using it at trial. Whether or not he  
17 marks it as an exhibit is an additional step that  
18 he may or may not take. Anything he is reading  
19 from that he is, by definition, using it, and it  
20 falls within this disclosure obligation.

21 Your Honor, the state -- when we argued  
22 to discuss this issue of a lawsuit with respect to  
23 Mr. Mehravar, who was the previous witness, the  
24 state agreed that the existence of a lawsuit, the  
25 fact of a lawsuit, is fair game, and it goes to

1 motive or bias.

2 Then there is additional issues. The  
3 complaint itself is hearsay, clearly hearsay. It's  
4 an out-of-court statement that the defense, at  
5 least with respect to Mr. Mehravar, intended to  
6 introduce because they wanted to try to prove to  
7 the jury that there is other issues such as toxins,  
8 there is other liability issues for Angel Valley,  
9 all sorts of issues that obviously are not settled  
10 by a lawsuit but are language that are used in that  
11 lawsuit.

12 The complaint is hearsay. To be reading  
13 the complaint in the language of the complaint to  
14 this witness is hearsay and should not be allowed.  
15 I agree that the fact of the lawsuit, and she has  
16 admitted it, goes to motive or bias, and then the  
17 inquiry stops there.

18 Although it's the state's position that  
19 if these lawsuits have been settled, if Mr. Ray or  
20 his insurance company have paid money to these  
21 witnesses, that information should be allowed as  
22 well because that to me is an admission of guilt by  
23 Mr. Ray if he's settling these lawsuits.

24 And I think Mr. Li has now opened that  
25 door and the state should be allowed to ask the

1 witness has this lawsuit been settled? And did  
2 Mr. Ray pay money to you in order to make this  
3 lawsuit settle? It also negates the suggestion  
4 that this witness now has a motive to lie because  
5 her lawsuit has settled.

6 It's a very different scenario if there  
7 is a pending lawsuit and she stands to gain or in  
8 some way is concerned about the impact of her  
9 testimony on a pending lawsuit.

10 If this lawsuit has settled -- and I  
11 believe that it has. Although I've not received  
12 any disclosure from the defense. But if this  
13 lawsuit is settled, then any motive to tailor her  
14 testimony in such a way is now gone. Her testimony  
15 cannot impact something that has settled, has been  
16 resolved, and has gone away.

17 THE COURT: With regard to the hearsay point,  
18 Ms. Polk, if you recall from the Hernandez case,  
19 the document there was a governmental claim  
20 submitted under Title 12. And the majority of the  
21 Supreme Court said that that's impeachment and  
22 that's outside of 408. I think that might be what  
23 Mr. Li is looking at right now. I don't know.

24 But that was a governmental claim letter.  
25 And, as I recall, the majority indicated the

1 concern that if people are going to be asserting  
2 claims, it should be a truthful statement, and it  
3 can be used for impeachment.

4 There was a dissent in that case, and I  
5 think it was a dissent based primarily on 408.

6 But this is a complaint. It's not a  
7 governmental claim letter. So there is that  
8 distinction with the Hernandez case. But doesn't  
9 Hernandez really address the concern with hearsay  
10 when something is being used for impeachment?

11 I think it's the Hernandez case. Isn't  
12 that the one.

13 MR. LI: I believe so, Your Honor.

14 THE COURT: Okay.

15 MS. POLK: And, Your Honor, on the issue of  
16 hearsay, to be an exception to the hearsay rule, it  
17 is -- or nonhearsay, it is an admission by a party  
18 opponent. This person, unlike Hernandez, is not a  
19 party to this proceeding.

20 THE COURT: But if it goes to bias, you're --  
21 okay. It's not, strictly speaking -- well, that's  
22 the question. In Hernandez I don't know if the  
23 person signed the governmental claim letter, for  
24 example, in that case. I don't think it's  
25 discussed. I don't know if the complaint was

1 signed in this which would give it some additional  
2 indicia of being adopted.

3 MS. POLK: And, Your Honor, again, in looking  
4 at Rule 801, a party or that party's agent, such as  
5 the lawyer, can make a statement that the party  
6 therefore adopts.

7 But, again, the operative question is, is  
8 that person a party to the lawsuit. Because then  
9 it's an admission by a party opponent. In this  
10 case, Ms. Gennari is not a party to this  
11 proceeding, and so clearly it is hearsay.

12 Additionally, again, there has been no  
13 disclosure to the state. I don't know what the  
14 record is that Mr. Li is reading from. If it's a  
15 complaint, has it been signed? Is it a verified  
16 complaint? We don't know any of that because there  
17 has been no disclosure and we don't have it.

18 But I would just emphasize, again, two  
19 questions. One is the existence of a lawsuit. And  
20 I do believe that's relevant. And Mr. Li has  
21 established that.

22 The second is the complaint itself or  
23 reading from a document which is clearly hearsay.  
24 Mr. Gennari is not a party opponent, as Hernandez  
25 or the Hernandez's attorney was, and, therefore, is

1 a party made -- or a statement made by an agent.  
2 She's simply not a party and so not an exception  
3 under the hearsay rule.

4 MR. LI: Your Honor, if I may?

5 THE COURT: Yes.

6 MR. LI: There are many, many different  
7 responses to Ms. Polk's argument, which I'll sum up  
8 with I think she has the evidence code wrong.

9 First of all, this is not being -- all I  
10 need is a good-faith basis to ask. And that's all  
11 I've done. And, in fact, just for the record, what  
12 I'm reading from is my cross-examination outline.  
13 And we are not introducing any evidence. So we're  
14 not seeking to introduce, quote/unquote, hearsay.  
15 What we are doing is we're impeaching a witness  
16 with prior inconsistent statements and  
17 demonstrating motive and bias under Rule 613.

18 The issue that Ms. Polk stepped into,  
19 which would literally result in reversible error  
20 the moment she asks the question, is -- relates to  
21 Rule 408, which governs the admissibility or  
22 nonadmissibility of any settlement or settlement  
23 offers. And it is explicitly not permissible to go  
24 into that under Rule 408.

25 I mean, it just says, prohibited -- you

1 know -- 408(a). Prohibited use, evidence of the  
2 following -- and this is settlement -- is not  
3 admissible on behalf of any party when offered to  
4 prove liability. So it would literally be  
5 reversible error on -- the moment she opened her  
6 mouth to ask about that question.

7 And, Your Honor, just for the record, the  
8 case hasn't settled. So the condition precedents  
9 that Ms. Polk believes matters that -- you know --  
10 she, in fact, doesn't have a motive to lie or to  
11 change her story just doesn't exist. She has an  
12 active case, and she has an economic interest in  
13 the outcome of this particular criminal case. And  
14 we have a right to ask about this.

15 I think the point -- one point -- and I  
16 won't address this if the Court already agrees with  
17 us. But it is the state's obligation to find out  
18 whether or not their witness has bias. It is not  
19 simply a question of whether or not they actually  
20 physically possess a document. If they have reason  
21 to believe that there might be such a document,  
22 they need to go ask for it.

23 And I want to make another point on this  
24 on the record, Your Honor. With respect to Dennis  
25 Mehravar, we have scads of communication between us

1 and the state -- not scads, but several letters,  
2 communication between us and the state in which the  
3 state acknowledges that they need to talk to the  
4 plaintiffs' lawyers in these various cases. So  
5 it's not as if they don't know about a lawsuit or  
6 lawsuits.

7 You know, setting aside the fact that  
8 it's obvious that people are going to file lawsuits  
9 under these circumstances, but they, in fact, have  
10 knowledge of lawsuits being filed by various of the  
11 participants.

12 So they cannot just say we now -- we're  
13 not going to actually ask for any complaints so,  
14 therefore, we won't have custody of the complaints.  
15 They can't play that game. If they have knowledge  
16 of something and they're communicating with these  
17 lawyers, they have a duty -- they have a duty to  
18 get them.

19 And one more point that Ms. Do points  
20 out. We have listened to hours and hours of  
21 detective interviews. The detectives talk about  
22 the lawsuits and the plaintiffs' lawyers. So it is  
23 not the case that the state is unaware of the  
24 existence of lawsuits.

25 All of this doesn't matter. Basically,

1 the bottom line is I have a good-faith basis to ask  
2 questions of this witness relating to her bias.  
3 I'm not seeking to introduce or move into evidence  
4 this complaint. I'm simply asking her about her  
5 existing bias.

6 THE COURT: Ms. Polk.

7 MS. POLK: Your Honor, yes. Two points.

8 First of all, this is not a trial by surprise.

9 Again, going back to Rules 15.1 and 15.2, there is  
10 an obligation on the parties to let the other side  
11 know what is the evidence we're going to use so  
12 that if the state -- a party has an objection, a  
13 party can file a motion in limine. We can brief  
14 it, and we can get rulings from the Court ahead of  
15 time.

16 That's what these rules are about. And  
17 that's where 15.2 clearly says. The defense has to  
18 disclose to the state any exhibits, records, or any  
19 documents they intend to use. Copying from a civil  
20 complaint language and writing it up in your script  
21 for cross-examination does not allow a party to  
22 circumvent that rule.

23 If you're going to start reading from a  
24 complaint, whether you have the complaint in your  
25 hand or you retype it and put it in your script,

1 you still have an obligation to let the other side  
2 know you intend to use this document.

3 And had the defense done so, then we  
4 wouldn't be arguing this in a break. We could have  
5 thoroughly briefed it. We would have argued it.  
6 And we would have had a ruling from the Court ahead  
7 of time. So that's the first issue, the discovery  
8 violation.

9 The second issue is the appropriate use  
10 of the information, evidence of the lawsuit itself.  
11 Again, the state agrees that it is fair game to  
12 question a witness on motive or bias as to whether  
13 or not you filed a lawsuit. Mr. Li has done that.  
14 This witness has admitted that she, in fact, filed  
15 a lawsuit. That's part one.

16 But to go to the next step, which is,  
17 then, start using a hearsay document and reading  
18 from it to question a witness is simply not  
19 allowed. She is not a party. She's not a party  
20 under Rule 801. Her attorney is not a party. And  
21 the Hernandez case specifically talks about using a  
22 document to examine or cross-examine a party to a  
23 litigation.

24 This person is not a party, and it simply  
25 does not fall under the hearsay exception.

1 Again, we don't know what the complaint  
2 looks like. Is it verified or not? Is it signed  
3 by her attorney? She's already said she didn't  
4 really read it. And so to allow Mr. Li to continue  
5 to question her about specific paragraphs is simply  
6 unfair. And additionally it's unfair because a  
7 copy has not been given to the state.

8 When we discussed this issue with the  
9 Court concerning witness Dennis Mehravar, the Court  
10 agreed with the state that if the defense was going  
11 to be allowed to read from certain paragraphs, then  
12 the state could read from some of the other  
13 paragraphs, which didn't help the defense's case.

14 The defense is aware of that, and so now  
15 what they've done is rather than bring that  
16 complaint into court so that we can see the entire  
17 document and have a fair redirect, if  
18 cross-examination is going to be allowed, we can't  
19 even do that because he's reading parts of a  
20 document without bringing the entire document into  
21 court and without giving it to the state.

22 And lastly, Judge, I'd like to just  
23 discuss for a moment Rule 408, offers to compromise  
24 and compromise is not admissible, are not  
25 admissible, except that you need to read

1 Subparagraph B, which says permitted uses. And the  
2 second sentence says, examples of permissible  
3 purpose include proving a witness's bias or  
4 prejudice.

5 And Mr. Li has used it to -- has used the  
6 lawsuit to establish bias or prejudice. Under  
7 Rule 408, then, the state is allowed to negate the  
8 suggestion of bias or prejudice by going into the  
9 compromise itself, to the settlement itself.

10 Because very clearly, if this lawsuit has  
11 been settled, and I believe it has been, there is  
12 no bias. There is no motive anymore to tailor  
13 testimony because it won't affect anything. And so  
14 the state is allowed to let the jury know that yes,  
15 that lawsuit has been settled.

16 THE COURT: I'm a little bothered by the  
17 implication, Ms. Polk, if you're indicating that  
18 since the lawsuit is over, someone might revert  
19 back to a different story or something. There is  
20 something that doesn't quite ring that -- you  
21 know -- while the lawsuit is pending, there might  
22 be a bias, but when it's over, something different  
23 could be said. There is just something about  
24 that --

25 MS. POLK: Your Honor, the suggestion is --

1 THE COURT: -- that's concerning.  
2 Go ahead.

3 MS. POLK: The suggestion is being made by  
4 Mr. Li that this witness has a motive or bias to  
5 lie. To complete the story, the jury needs to know  
6 that that lawsuit is not pending. They can draw  
7 whatever implications they want from it. But that  
8 lawsuit is not pending. He has suggested through  
9 cross-examination that her early statements which  
10 were made shortly after the event somehow conflict  
11 with her testimony today.

12 And now he's trying to suggest that there  
13 is a lawsuit out there and that she's trying to  
14 bolster her testimony today to somehow bolster that  
15 lawsuit. To complete the story, the jury needs to  
16 know that lawsuit isn't out there anymore.

17 THE COURT: I'm saying that -- here's the  
18 idea: If there have been depositions during the  
19 lawsuit and certain things said, the person would  
20 likely be -- I'm saying this in the abstract -- a  
21 person would likely be consistent with that or  
22 intend to be consistent regardless of whether or  
23 not the case was resolved.

24 MR. LI: And, Your Honor, it hasn't been  
25 resolved. So this entire discussion is academic.

1 And, I mean, I would submit Ms. Polk's  
2 reading is wrong. But it doesn't matter because it  
3 hasn't been settled.

4 THE COURT: Ms. Polk, you didn't address the  
5 Hernandez case when it talks about the use of the  
6 claim letter. How is that distinguishable?

7 MS. POLK: Your Honor, again, because  
8 Hernandez was a party to that action. And under  
9 801 -- 801(d)(2), an admission by a party opponent  
10 is allowed as an exception to the hearsay rule.  
11 She is not a party.

12 THE COURT: All right. I understand that.  
13 Okay. I'm going to go back. I have the case  
14 handy.

15 MR. LI: Your Honor, if I may?

16 THE COURT: Go ahead.

17 MR. LI: If I can just short circuit some of  
18 this. I'm not going much further with it. I have  
19 one or two questions that are directly related to  
20 bias. And I'm going to ask those questions.

21 We're not seeking to introduce the  
22 complaint. We've, basically, established the fact  
23 of the complaint. And -- you know -- we're going  
24 to -- I am going to put it in front of her to show  
25 that she -- you know -- she did make a number of

1 those claims that I said that if anybody said this,  
2 it would be untrue.

3 I think I have an absolute right to do  
4 that under Hernandez and other cases. It's not  
5 being offered for the truth of the matter asserted.  
6 It is being offered to show an inconsistent  
7 statement and then also her bias.

8 THE COURT: And the inconsistent statement,  
9 that is a -- that has admissibility bases beyond  
10 the 801 Rule obviously.

11 But, Ms. Polk, go ahead.

12 MS. POLK: Well, first of all, it's not her  
13 statement, Your Honor. It's a statement by an  
14 attorney.

15 Secondly, Mr. Li has just, essentially,  
16 admitted it's a discovery violation. He has said  
17 now he intends to put this complaint in front of  
18 her. It's never been disclosed to the state. We  
19 still don't have it.

20 THE COURT: Well, let me ask you in that  
21 regard. You don't -- you're saying you had no idea  
22 there were lawsuits and -- is that what you're  
23 saying? You had no idea there were lawsuits --

24 MS. POLK: Your Honor --

25 THE COURT: -- sought out?

1 MS. POLK: -- the state knows that there are  
2 lawsuits filed.

3 THE COURT: And do you think that that would  
4 come under a disclosure obligation to have to say  
5 that? Or are you relying on the fact that the  
6 defense must have known that also? Because it  
7 would seem that the cases indicate the fact that a  
8 lawsuit is filed, that is something that goes to  
9 motive or bias. Isn't that something the state  
10 would normally disclose under Kyle Brady  
11 principles?

12 MS. POLK: Your Honor, not necessarily. But  
13 these witnesses have been interviewed. The defense  
14 is the one that attempted to ask them about  
15 lawsuits even though their client is a party to the  
16 lawsuits. Your Honor, these are lawsuits that  
17 their client is a party to.

18 THE COURT: So you're saying you would not  
19 have had to disclose that because they would have  
20 had to have known it?

21 MS. POLK: Yes. And it's not that I --

22 THE COURT: And they're saying they don't have  
23 to disclose it because you must have known it.

24 MS. POLK: Well, two separate issues. First  
25 of all, there are Brady obligations. That is not

1 information within the state's possession.

2 THE COURT: So you're saying you did not know  
3 there were lawsuits filed. Because if you did  
4 know, then it was in your possession, it seems to  
5 me.

6 MS. POLK: Your Honor, the state is aware that  
7 lawsuits were filed. And mostly we learned about  
8 it through the defense interviews of witnesses when  
9 the defendant started asking witnesses about  
10 lawsuits and kind of probing, well, there is a  
11 confidentiality agreement, trying to get witnesses  
12 to talk about the terms. And so that's how we  
13 learned that there were lawsuits. So that's how we  
14 learned about it.

15 Secondly, the Brady obligation applies to  
16 documents that are in our possession. They've  
17 never been in our possession.

18 And thirdly, their client is a party to  
19 those lawsuits. So that -- even if somehow the  
20 Court decided that the state had a Brady obligation  
21 to go out and actively find lawsuits --

22 THE COURT: And I didn't say that, Ms. Polk.  
23 I said if you already knew, though, you had the  
24 information. So I agree, no. You don't have to go  
25 out and investigate. I don't agree with that

1 proposition. I'll tell you that right now. I  
2 don't agree that the state has to go out and  
3 explore every possibility. But when you have  
4 information and possess that, then that question  
5 doesn't even arise.

6 MS. POLK: Yes. And then the next step is  
7 under Rule 15.2, if you intend to use these  
8 documents at trial, you have to disclose them,  
9 period. You have to disclose them.

10 THE COURT: The questioning so far is  
11 permissible. It's cross-examination from a  
12 document that was -- well, I don't know the level  
13 of endorsement. And that is an issue. And  
14 obviously it would have been clear had this matter  
15 been presented at an earlier time.

16 But the questions at this point, as  
17 Mr. Li has indicated, you need a good-faith basis  
18 to ask a question. And that's separate from the  
19 ultimate admissibility of the extrinsic evidence of  
20 the complaint itself. My feeling on that is that  
21 that's a document people have been long aware of.  
22 And it should have been disclosed if it was going  
23 to be offered as actual evidence, extrinsic  
24 evidence. And it wasn't. And the rules require  
25 that. So the complaint itself would not be

1 admissible.

2 Cross-examination from the complaint --  
3 all right -- for this witness, it's been covered in  
4 any event without objection to this point, and it's  
5 going to be permitted. Cross-examination,  
6 good-faith basis, that's the test.

7 MS. POLK: And, Your Honor, the state would  
8 request at this time a copy of the complaint from  
9 the defense.

10 THE COURT: And they're entitled to that. I  
11 think that's covered under 613. And I think the  
12 defense is offering this primarily under the  
13 authority of 613.

14 MS. POLK: And then, Your Honor, is the Court  
15 going to allow the state to redirect regarding  
16 everything that's in the complaint? I would just  
17 note, Your Honor, this is not a verified complaint.

18 THE COURT: And I don't know that a complaint  
19 would --

20 MR. LI: Your Honor, the only questions we're  
21 asking are: One, did you file a complaint? And  
22 are you seeking money? And those are questions  
23 that we've established -- you know -- as a start.  
24 There is one other question along those lines.

25 Then the second question is -- I asked

1 her a number of questions. Have you ever claimed  
2 "X"? And she said no. And this lawsuit makes  
3 those claims.

4 I'm not going to walk through every one  
5 of them, but I'll walk through two of them. And I  
6 have a right to do that. This is a prior  
7 inconsistent statement.

8 THE COURT: Where is your authority for a  
9 complaint that's signed by an attorney?

10 MR. LI: She said that she reviewed it. And  
11 I'm entitled to ask her how far she's reviewed it.  
12 I'm also entitled to refresh her recollection with  
13 it. I'm entitled to ask good-faith basis questions  
14 like isn't it true that in your complaint you said  
15 "X"? And she can say no. She can say I don't  
16 remember. And I can say would it refresh your  
17 recollection. This is very vanilla, Your Honor.

18 And I'm not asking to introduce these  
19 into evidence. We did talk about this several  
20 weeks ago. And I think -- you know -- I am  
21 operating under the Court's guidelines. I  
22 understand that the state would rather have these  
23 documents ahead of time. But we have a right to  
24 have this witness tested as to her bias and motive  
25 without preparation, without her being able to

1 change her story on -- you know -- before she gets  
2 on the stand. We have a right to have the jury see  
3 her admit that she has a bias.

4 MS. POLK: Your Honor, first of all, these are  
5 not statements by the witness. These are  
6 statements by her attorney. They do not fall under  
7 Rule 801 because she's not a party.

8 Under Rule 801, statements made by an  
9 agent or an attorney are also admissible as  
10 statements by a party. But she's not a party. And  
11 so trying to impeach her with statements made by an  
12 attorney in a state where you have to plead every  
13 possible theory of liability when you file the  
14 complaint is simply unprecedented.

15 There is no basis to show her the  
16 complaint. She has admitted there is a lawsuit.  
17 And that's the end of the inquiry. And there is  
18 certainly no basis to confront her with statements  
19 made by an attorney. These are not her statements.

20 And, essentially, what Mr. Li is asking  
21 is, was your attorney truthful? Your attorney made  
22 these statements. Was he truthful? That's  
23 completely collateral, completely inadmissible, and  
24 just running far afield of what this inquiry is  
25 about, which is does this witness have a bias or

1 motive? And that comes out with the existence of a  
2 lawsuit. And that has come out and she has  
3 admitted it. There is no basis to go any further.  
4 She has admitted that there is a lawsuit.

5 THE COURT: There is a difference between the  
6 prior inconsistent statement and good-faith basis  
7 for a question also. I don't think the test is the  
8 same.

9 In any event, the complaint itself is not  
10 going to be admitted. And then you get to the  
11 problem, though, of going into so much detail that,  
12 essentially, it's coming into evidence indirectly.

13 MR. LI: Your Honor, the only --

14 THE COURT: I'm still waiting for -- you're  
15 saying that she's seen this statement, and somehow  
16 that means it's been adopted and is her statement  
17 by operation of law.

18 MR. LI: Well, I think the Hernandez case is  
19 very instructive on this point, that the duties --  
20 the State of Arizona has a policy reason to hold  
21 everybody who makes a claim, no matter what form  
22 its made, to the truth that is stated in those  
23 claims. There is a policy duty that you don't just  
24 willy-nilly file a lawsuit.

25 THE COURT: And I've acknowledged that.

1 MR. LI: Okay.

2 THE COURT: I've said is there any  
3 distinction -- right from the start, is there a  
4 distinction between a claim letter under Title 12  
5 and the complaint? Is there really a distinction?  
6 That's what I asked at the very start. And you're  
7 saying now --

8 MR. LI: And I would say no.

9 THE COURT: Ms. Polk said the distinction is  
10 in the Hernandez is you're actually dealing with  
11 the lawsuit itself and you're dealing with parties.  
12 Ms. Polk says that is the key distinction there.

13 I need to read the case because it's been  
14 a few weeks. And I'm going to do that.

15 Right now, as I've indicated, based on  
16 the good-faith bases for questioning, these  
17 questions can be asked.

18 MR. LI: I have a copy of the case that I can  
19 give you. May I approach?

20 THE COURT: Yes.

21 There is enough to permit  
22 cross-examination. The document itself will not be  
23 admitted.

24 And I'd like to resume about 11:00.

25 MS. POLK: Your Honor, in terms of redirect --

1 THE COURT: I'm going -- can I see the --  
2 everyone has seen the complaint, I guess, now  
3 except me.

4 MR. LI: That seems unfair.

5 THE COURT: What we'll do is I'll need to come  
6 out before the jury.

7 We'll be in recess. Thank you.

8 MR. LI: Thank you.

9 (Recess.)

10 THE COURT: The record will show the presence  
11 of the defendant, Mr. Ray, and the attorneys. The  
12 witness and the jury are not present.

13 Counsel, I have not been provided a great  
14 deal of law on this rather complex issue.

15 Recalling back to the situation with Mr. Mehravar,  
16 I can say this: My concern there was impeachment  
17 with a notice pleading complaint that talked about  
18 toxins and various theories that are presented in a  
19 conclusory notice pleading type fashion where a  
20 client, if you will, or a person very unlikely have  
21 any knowledge of those kinds of technical terms and  
22 the pleading.

23 And I even wondered at that time if there  
24 wouldn't be a different situation if the pleading  
25 went beyond the notice that's required at least in

1 Arizona, went beyond that and provided some type of  
2 detail where logic would indicate the source of the  
3 that detail. And that gets you into the question  
4 of what's a good-faith basis for a question.  
5 Different situation. And I don't think I've been  
6 provided any authority.

7 I appreciate the state's distinction in  
8 Hernandez saying that that's the parties. But it  
9 gets you back to the same kinds of issues. When is  
10 an attorney's presentation something that can be  
11 used in some fashion against a client whether in  
12 that suit or another suit? Totally separate case.

13 So I'm going to recess. I'm going to  
14 look into this. And we're going to have the jury  
15 come back at 1:15. I want the parties here at  
16 1:00. And I'll have a ruling. We'll proceed at  
17 that time. Thank you. We are in recess.

18 (Recess.)

19 THE COURT: The record will show the presence  
20 of the defendant, Mr. Ray, the attorneys, not the  
21 jury or the witness. I had a chance to look at  
22 some of the case law.

23 Mr. Hughes, Ms. Polk, you did receive the  
24 two cases that I was provided.

25 MS. POLK: Yes, Your Honor.

1 THE COURT: Okay. Back to the basics. This  
2 issue does not involve hearsay. Thinking back to  
3 Mr. Mehravar, in that case, the concern I had was  
4 offering some statements about cause being toxins,  
5 that being alleged in the complaint, and somehow  
6 suggesting that's the truth of what happened.

7 With regard to Ms. Gennari, the statement  
8 is not in any way being offered for the truth.  
9 It's offered as an inconsistent statement, for one  
10 thing, which can implicate hearsay concerns. But  
11 it's also offered to show bias and motive.

12 So 801(d)(2) is just not directly  
13 applicable to this situation. It's not offered for  
14 the truth.

15 I think the best guide for this issue is  
16 Rule 613. That in one sense handles the disclosure  
17 issue. And I think the Osborn case, which has been  
18 cited in another context, deals with that question.  
19 And it draws a distinction -- the Osborn case draws  
20 a distinction between testimonial evidence and then  
21 real evidence.

22 And if you will recall, the Osborn case  
23 came up in conjunction with a photograph being  
24 presented for the first time. And I disallowed  
25 that. I don't think the Osborn case provided

1 authority for that. But the Osborn case does  
2 provide strong authority for the proposition that  
3 if statements are going to be used, basically, for  
4 impeachment, they don't have to be provided to the  
5 other side. Rule 613 controls that.

6 Then the question becomes is this, in  
7 fact, a statement of Ms. Gennari? And the  
8 authority I've been provided by the defense  
9 indicates, as I think I've somewhat indicated, has  
10 to do with whether or not the person has knowledge  
11 of what's in the complaint.

12 I've reviewed the testimony of  
13 Ms. Gennari. And she did indicate she read  
14 something to the effect as much as I could stand or  
15 something like that but had read this. So, in any  
16 event, the information is proper impeachment. It's  
17 proper impeachment.

18 It's a different question as to whether  
19 it can come in as extrinsic evidence. I have not  
20 seen direct authority on that. But if it is a  
21 statement, there is a possibility of extrinsic  
22 evidence being admitted as long as 613(b) is  
23 complied with. So the cross-examination on the  
24 complaint is going to be allowed.

25 Ms. Polk, you had indicated a concern

1 about would you be allowed to ask about other parts  
2 of the complaint. What would your basis for that  
3 be?

4 MS. POLK: Your Honor, it depends on what the  
5 cross-examination is. But if the cross-examination  
6 about the complaint is allowed, then clearly the  
7 state gets to go wherever redirect would take us as  
8 long as it would be relevant. If doors are opened,  
9 if topics are approached, then the state would be  
10 allowed appropriate follow-up.

11 THE COURT: It would seem to me that if --  
12 essentially, what's at stake here is an  
13 inconsistent statement. If that's the crux of it,  
14 I don't know why potentially consistent statements  
15 would be admissible. I guess we'll just have to  
16 see what happens.

17 MS. POLK: Your Honor, I'm not looking at  
18 consistent statements. I'm just not looking at an  
19 issue of rehabilitation. What I'm looking at  
20 are -- cross-examination in Arizona is not limited  
21 to the direct. So if cross-examination goes into  
22 new topics not covered on direct, then redirect can  
23 cover topics raised upon cross-examination.

24 THE COURT: Absolutely.

25 MS. POLK: And that's what I'm looking at.

1 The ability -- the state was not put on notice that  
2 the defense was going to raise this issue of the  
3 lawsuit. We were not put on notice of the document  
4 itself. Then appropriate redirect to go into those  
5 areas -- the fact of the lawsuit, issues raised on  
6 cross-examination -- would be appropriate.

7 THE COURT: Mr. Li.

8 MR. LI: I think it's still got to be governed  
9 by the rules of evidence. And -- you know -- I  
10 don't know what topics Ms. Polk's referring to.  
11 But obviously if it complies with the rules of  
12 evidence and it's covered by something that I bring  
13 up in cross, then it makes sense. But if it's not  
14 covered by the rules of evidence, then it's not  
15 admissible and the questions would not be proper.

16 THE COURT: I do want to provide one citation  
17 out of another jurisdiction. This issue may come  
18 up again. And I want to have all of the law  
19 presented. But Commonwealth versus Hanford, 937 2d  
20 1094, out of Pennsylvania. And a lot of this law,  
21 when you're talking about admissibility of  
22 complaints, has to do with the law in effect, is  
23 that some form of judicial admission in different  
24 laws in different states say different things about  
25 that. So this case may be distinguishable on those

1 types of grounds.

2 But in that particular case, there is  
3 just a finding that the trial court's decision to  
4 exclude the factual aberrants, the civil suit, was  
5 there.

6 And as I indicated before, the  
7 distinction with Mr. Mehravar, as I'm seeing it, is  
8 what's being dealt with with regard with  
9 Ms. Gennari are factual aberrants as opposed to  
10 notice pleading, general statements. And that is  
11 an important distinction.

12 Then we'll get the jury in.

13 Anything else?

14 Oh. There was a note -- two notes. One  
15 I've already indicated I'll cover with regard to  
16 the witness list. But then another note that had  
17 to do with a juror who was approached but seemed to  
18 do the right thing in not letting further  
19 discussion proceed.

20 Does anybody feel that they need to  
21 follow up other than to acknowledge that this is  
22 the appropriate thing to do?

23 Ms. Polk?

24 MS. POLK: No, Your Honor.

25 MR. LI: No, Your Honor.

1 THE COURT: So we'll cover this before we  
2 recess today. Thank you.

3 MR. LI: Thank you.

4 (Proceedings continued in the presence of  
5 jury.)

6 THE COURT: The record will show the presence  
7 of the defendant, Mr. Ray, the attorneys, the jury.  
8 Ms. Gennari is on the witness stand. She has been  
9 sworn.

10 Mr. Li.

11 MR. LI: Thank you, Your Honor.

12 Q. Good afternoon, Ms. Gennari. Before the  
13 break we were talking about a lawsuit that you had  
14 filed against James Ray International. Do you  
15 remember that?

16 A. Yes.

17 Q. And I believe I made a mistake and I said  
18 that you had filed it in September of 2009. You  
19 filed it in September of 2010; is that correct?

20 A. Yes.

21 Q. And that's about 11 months after you made  
22 your statement to the police; correct?

23 A. Yes.

24 Q. Now, before the break I had asked you a  
25 series of questions about whether or not you had

1 ever claimed certain things. Do you remember that  
2 line of questioning?

3 **A. Yes.**

4 **Q.** I asked you, for instance, whether you  
5 had ever claimed that when you tried to leave the  
6 sweat lodge, Mr. Ray blocked your passage with  
7 threats of offensive touching. Do you remember  
8 that?

9 **A. Yes.**

10 **Q.** And you said that you had never made that  
11 claim?

12 **A. Yes.**

13 **Q.** And, in fact, you said that if anybody  
14 said that, that would be untrue. Do you remember  
15 that?

16 **A. Yes.**

17 **Q.** I also asked you whether you had ever  
18 claimed that you had witnessed Mr. Ray do so to  
19 other participants. Do you remember that?

20 **A. Yes.**

21 **Q.** And you said that you had not  
22 witnessed -- you had never said that you had  
23 witnessed Mr. Ray doing that to other participants.

24 **A. Yes.**

25 **Q.** And do you remember, I asked you if

1 somebody said that you had witnessed other --  
2 Mr. Ray do so to other participants, that too would  
3 be untrue?

4 **A. Yes.**

5 **Q.** Do you remember that?

6 **A. Yes.**

7 **Q.** I also asked you --

8 MS. POLK: Judge, asked and answered all these  
9 questions.

10 THE COURT: Overruled.

11 **Q.** BY MR. LI: I also asked you whether you  
12 had ever claimed that when you wanted to leave the  
13 sweat lodge, Mr. Ray physically touched you in an  
14 offensive way thereby causing you injuries and  
15 extreme emotional distress.

16 Do you remember that?

17 **A. Yes.**

18 **Q.** And you said that you had never made that  
19 claim?

20 **A. Yes.**

21 **Q.** And I asked you if somebody said that,  
22 that would be untrue. Do you remember that?

23 **A. Yes.**

24 **Q.** Now, in your lawsuit that you filed on  
25 September -- in September 2010, you made the

1 following claim, did you not?

2 **A. Can I --**

3 **Q.** I'm going to ask you a question. And if  
4 it will refresh your recollection to look at your  
5 lawsuit, I will show it to you. Okay?

6 **A. Okay.**

7 **Q.** Did you say when plaintiff, that's you,  
8 attempted to escape from the sweat lodge,  
9 defendant, James Arthur Ray, blocked her passage  
10 with threats of offensive touching? Did you say  
11 that?

12 **A. What I wanted to say is that I recalled  
13 over the break that I -- what I had read with my  
14 lawyer was a bunch of back and forth, and I had  
15 actually not read what he filed.**

16 **Q.** I'm going to place this before you.

17 If I may approach the witness?

18 THE COURT: Yes.

19 **Q.** BY MR. LI: And I'd ask you to look at  
20 lines 6 through 7, 8 through 9, and then 11 through  
21 14.

22 MS. POLK: Counsel, could I have the page  
23 number.

24 MR. LI: Page 4, lines 6 through approximately  
25 14.

1 **Q.** Ms. Gennari, have you had a chance to  
2 read lines 6 through 14?

3 **A. Yes. I have now.**

4 **Q.** Is your recollection refreshed that your  
5 lawsuit alleges that Mr. Ray blocked your passage  
6 with threats of offensive touching?

7 **A. This shows me that that is what my lawyer  
8 filed. In our conversations that's not the story I  
9 told him. But it looks like we crossed wires.**

10 **Q.** So your lawsuit, then, in which you are  
11 claiming monetary damages from James Ray  
12 International, Mr. Ray, and others, is untrue?

13 **A. It's not expressed properly.**

14 **Q.** Well, ma'am, I believe when I asked you  
15 on cross-examination whether -- if anybody said  
16 Mr. Ray blocked your passage with threats of  
17 offensive touching, you said that that would be  
18 untrue. Correct?

19 **A. Yes.**

20 **Q.** So your lawsuit alleges that Mr. Ray  
21 blocked your passage with threats of offensive  
22 touching; correct?

23 **A. And this is honestly the first time I'm  
24 seeing this.**

25 **Q.** But I'm just asking you. Is that

1 correct?

2 **A. Yes.**

3 **Q.** And that would be untrue; correct?

4 **A. Yes.**

5 **Q.** And your lawsuit also claims that you  
6 witnessed Mr. Ray do so to other participants;  
7 correct?

8 **A. Yes.**

9 **Q.** And when I asked you about that on  
10 cross-examination, you said that that would be  
11 untrue?

12 **A. Yes.**

13 **Q.** So your lawsuit --

14 **A. Bob and I need to have a conversation.**

15 **Q.** Okay. Your lawsuit in which you're  
16 claiming money damages is untrue; correct?

17 **A. As written.**

18 **Q.** Yes. As written, it is untrue; correct?

19 **A. As written.**

20 **Q.** And your lawsuit claims that Mr. Ray  
21 physically touched you in an offensive way thereby  
22 causing you injuries and extreme emotional  
23 distress; correct?

24 **A. He did not touch me.**

25 **Q.** Okay. And so your lawsuit makes that

1 claim; correct?

2 **A. I see that.**

3 **Q.** Does it make that claim?

4 **A. Yes.**

5 **Q.** It is untrue; correct?

6 **A. Yes.**

7 MS. POLK: Judge, asked and answered.

8 THE COURT: Overruled.

9 **Q.** BY MR. LI: And your answer was?

10 **A. Yes.**

11 **Q.** It's untrue?

12 **A. Yes.**

13 **Q.** Now, you, Ms. Gennari, have a direct  
14 economic interest in Mr. Ray's conviction. True or  
15 false?

16 **A. I have no idea if the two are related.**

17 MR. LI: If I may approach, Your Honor?

18 THE COURT: Yes.

19 MR. LI: Ms. Polk, it's at page 5, lines 3  
20 through 6.

21 **Q.** Please take a look for the record at  
22 page 5, lines 3 through 6.

23 **A. Okay.**

24 **Q.** Your lawsuit claims that if Mr. Ray is  
25 convicted in this trial, you get your attorney's

1 fees paid; correct?

2 **A. Yes.**

3 **Q.** In fact, your lawsuit states, defendant,  
4 James Arthur Ray, has been charged with a felony  
5 arising from the foregoing facts; and plaintiff,  
6 that's you, hereby claims if defendant, James  
7 Arthur Ray is convicted of such felonies,  
8 attorney's fees pursuant to Code of Civil Procedure  
9 1021.4 against James Arthur Ray; correct?

10 **A. Yes.**

11 **Q.** And that allegation is repeated, is it  
12 not, at page 6, lines 7 through 10?

13 **A. Yes.**

14 **Q.** It is?

15 **A. Yes.**

16 **Q.** And it is, again, repeated at page 7,  
17 lines 24 through 27?

18 **A. Yes.**

19 **Q.** And what that means, ma'am, is that if  
20 Mr. Ray -- If this jury convicts Mr. Ray, you get  
21 your attorney's fees paid?

22 MS. POLK: Your Honor, calls for legal  
23 conclusion.

24 THE COURT: Sustained.

25 **Q.** BY MR. LI: The claim is -- your lawsuit

1 claims that if this jury convicts Mr. Ray, you  
2 should get your attorney's fees paid?

3 **A. I guess so.**

4 **Q.** So true or false? You have a direct  
5 economic interest in Mr. Ray's conviction?

6 **A. My lawyer does.**

7 **Q.** Well, let me just ask you that, ma'am.  
8 Did your lawyer just pull this out of the air?

9 **A. No. We talked. I told him I -- we  
10 talked for quite a while. He put all this  
11 together. We went back and forth a little bit on  
12 different points and things. But I actually never  
13 did read what he filed at the time he filed it.**

14 **Q.** But it's --

15 **A. That would have been too much for me.**

16 **Q.** Okay. I apologize for cutting you off.

17 But it's interesting because before we  
18 took this break, you said that you had read and  
19 reviewed the complaint.

20 **A. And I was remembering the back and forth  
21 we had had. But as this was -- as it was  
22 finalized, I actually didn't --**

23 **Q.** So -- I'm sorry. I apologize for cutting  
24 you off.

25 **A. This is -- this is not my world. I don't**

1 **know how it works.**

2 **Q.** So these various allegations about you  
3 being blocked at the door -- your attorney just  
4 made those up without your input?

5 MS. POLK: Objection. Speculation.

6 THE COURT: Sustained.

7 **Q.** BY MR. LI: Did you tell your lawyer that  
8 Mr. Ray had attempted to block you at the door  
9 physically?

10 **A.** **I told him he prevented me from leaving**  
11 **by telling me that I was too late.**

12 **Q.** And so, therefore, what's written in your  
13 lawsuit in which you are seeking --

14 **A.** **Clearly we crossed wires.**

15 **Q.** Let me just finish the question, ma'am.  
16 Therefore, what's written in your

17 lawsuit, in which you're claiming money, including  
18 attorney's fees, if Mr. Ray is convicted is false?

19 **A.** **As it stands, we need to amend that.**

20 **Q.** You signed up for Spiritual Warrior  
21 approximately what? A year before the event?

22 **A.** **Pretty much.**

23 **Q.** And you received a participant guide that  
24 was mass-mailed to you?

25 **A.** **Yes.**

1 **Q.** If I could get Exhibit 736 up on the  
2 screen.

3 Do you recall seeing something like this  
4 emailed to you?

5 **A.** **Yes.**

6 **Q.** And I'm going to hand it to you in a sec.  
7 If you could look at pages 11 through 14.

8 **A.** **Uh-huh.**

9 **Q.** I'm not going to ask you in detail about  
10 it yet. Those are liability waiver forms; correct?

11 **A.** **Yes.**

12 MR. LI: If we could have page 11 up on the  
13 screen.

14 **Q.** And this is the Spiritual Warrior  
15 waiver -- Release Waiver of Liability, Assumption  
16 of Risk Indemnity and Disclaimer; right?

17 **A.** **Yes.**

18 **Q.** And you received this about a year before  
19 the event -- I'm sorry. I apologize. You received  
20 this sometime in July --

21 **A.** **Yes.**

22 **Q.** -- is that correct?

23 **A.** **Something like that. Summer.**

24 **Q.** That's about what?

25 **A.** **Three months.**

1 **Q.** Three months before the event? And you  
2 had a chance to look through it; correct?

3 **A.** **Yes.**

4 **Q.** And, in fact, I believe you told  
5 Detective Willingham on October 27 that you knew  
6 about the Vision Quest because you had read about  
7 it in the release?

8 **A.** **Yes.**

9 **Q.** And you had also read about the sweat  
10 lodge ceremony?

11 **A.** **Yes.**

12 **Q.** And that's a ceremonial sauna involving  
13 tight spaces and intense heat?

14 **A.** **Yes.**

15 **Q.** And you had read about that; correct?

16 **A.** **(No audible response.)**

17 **Q.** Now, at the bottom of paragraph 2, there  
18 is a section that says, I fully understand and  
19 acknowledge there is no requirement whatsoever that  
20 I participate in the activities.

21 Do you recall that?

22 **A.** **Where are you?**

23 **Q.** Sorry.

24 If I may approach, Your Honor?

25 THE COURT: You may.

1 THE WITNESS: That's what it says.

2 **Q.** BY MR. LI: And you recall reading that?

3 **A.** **Actually, I don't recall reading that. I**  
4 **recall -- I recall looking for details of what we**  
5 **were going to do.**

6 **Q.** Okay. Eventually you signed some  
7 waivers, did you not?

8 **A.** **Yes.**

9 MR. LI: I don't know if Exhibits 178 and 179  
10 are in evidence. Are they?

11 If I may approach, in any event?

12 THE COURT: Yes.

13 They're marked.

14 **Q.** BY MR. LI: If you could look at the  
15 signature page.

16 **A.** **Uh-huh.**

17 **Q.** Those are the waiver forms you signed;  
18 correct?

19 **A.** **Yes.**

20 MR. LI: If I could have Exhibit 178 -- move  
21 Exhibits 178 and 179 into evidence.

22 THE COURT: Counsel?

23 MS. POLK: May I see the exhibits, Counsel?

24 MR. LI: Yes.

25 MS. POLK: Your Honor, the state has no

1 objection to Exhibits 178 and 179.

2 THE COURT: 178 and 179 are admitted.

3 (Exhibits 178 and 179 admitted.)

4 MR. LI: May I approach, Your Honor?

5 THE COURT: Yes.

6 Q. BY MR. LI: Placing before you  
7 Exhibit 178, if you could look at the second  
8 paragraph, the bottom part, page 2, second  
9 paragraph, bottom part starting with, I fully  
10 understand.

11 A. Yes.

12 Q. And the waiver that you signed said, I  
13 fully understand and acknowledge there is no  
14 requirement whatsoever that I participate in the  
15 activity?

16 A. Yes.

17 Q. Do you recall that?

18 A. I see it.

19 Q. And you signed it?

20 A. Yes.

21 Q. And it also, then, says, if I do choose  
22 to participate in any of the activities, I affirm  
23 that I have not been nor will I be coerced or  
24 persuaded in any way to do so.

25 Do you recall that?

1 A. I'm supposed to be precognitive?

2 Q. My question is, does the waiver say, I  
3 affirm that I have not been nor will I be coerced  
4 or persuaded in any way to do so?

5 A. That's what it says.

6 Q. Is that the waiver you signed?

7 A. Yes.

8 Q. Okay. And then the waiver also says, and  
9 I assume full responsibility for and risk of any  
10 injuries sustained in connection with the  
11 activities whether caused by negligence of the  
12 releasees or otherwise. It says that, doesn't it?

13 A. Yes.

14 Q. And, in fact, you signed that waiver,  
15 didn't you?

16 A. Yes.

17 MR. LI: Now, if I may approach, Your Honor?

18 THE COURT: Yes.

19 Q. BY MR. LI: I'd ask you to look at the  
20 last paragraph above your signature page on the  
21 second page of the waiver. So this is the last  
22 paragraph.

23 If we can blow that up.

24 You say that -- the waiver said, I

25 acknowledge that I've been given the opportunity by

1 the company to ask questions regarding any aspect  
2 of this waiver; correct?

3 A. Yes.

4 Q. And it also says, by signing below, I  
5 acknowledge that I have carefully and completely  
6 read and fully understand all aspects of this  
7 agreement and voluntarily agree to all of the terms  
8 and conditions stated in this document, and that in  
9 doing so I have not relied upon any oral  
10 representations, statements, or inducements apart  
11 from the statements made expressly herein, meaning  
12 within the waiver.

13 That's what it says; correct?

14 A. Yes.

15 Q. And then you signed right below that?

16 A. Yes.

17 Q. With a witness?

18 A. Yes.

19 Q. And you signed this waiver on  
20 October 3rd, 2009, about 11 months before you filed  
21 your lawsuit?

22 A. Yes.

23 Q. If we could talk for a second now about  
24 your experience in the sweat lodge.

25 And if I could have Exhibit 414 up on the

1 display.

2 So you recall this diagram; right?

3 A. Yes.

4 Q. And you indicated that you were somewhere  
5 in the 8:00 o'clock position?

6 A. 8:00, 8:30, something like that.

7 Q. 8:00, 8:30, somewhere around in there?

8 A. Uh-huh.

9 Q. And that Ms. Neuman was at the  
10 9:00 o'clock position?

11 A. Yes.

12 Q. Now, Ms. Neuman was on your left?

13 A. Uh-huh. Yes.

14 Q. And Ms. Tucker, Laurie Tucker --

15 A. Laura.

16 Q. Laura Tucker. I apologize. Laura Tucker  
17 was where?

18 A. She was the next one down.

19 Q. Next to who?

20 A. Next to Liz.

21 Q. So she was on the other side of Liz --

22 A. Yes.

23 Q. -- correct? So if you could just mark on  
24 the monitor where she was approximately.

25 And she was right next to Ms. Neuman;

1 correct?

2 **A. Yes.**

3 **Q.** Now, you had indicated on direct that

4 Ms. Neuman was asked to go there by Mr. Ray?

5 **A. Yes.**

6 **Q.** And that the Dream Team members were  
7 being placed at the various corners, as it were, of  
8 the sweat lodge?

9 **A. Yes.**

10 **Q.** And you understood that Ms. Neuman was  
11 there to help the participants, such as yourself,  
12 in their experience in the sweat lodge; correct?

13 **A. Yes.**

14 **Q.** And that's because -- you had met  
15 Ms. Neuman before?

16 **A. Yes.**

17 **Q.** And you had met her in the event?

18 **A. Yes.**

19 **Q.** And you knew her to be a strong, smart,  
20 capable woman?

21 **A. I didn't know her. I literally had met**  
22 **her to know her name.**

23 **Q.** She was --

24 **A. That's really all I know about her.**

25 **Q.** But she was a gung ho, impressive person;

1 correct?

2 **A. Not really.**

3 **Q.** You don't think she was a -- which part  
4 do you not agree with?

5 **A. She didn't strike me as gung ho,**  
6 **impressive. She was just normal, just someone I**  
7 **met.**

8 **Q.** Did she seem happy to be doing the sweat  
9 lodge?

10 **A. Yes.**

11 **Q.** Did she seem excited about the  
12 opportunity to go do a sweat lodge?

13 **A. Yes.**

14 **Q.** Had she indicated to you all that she had  
15 done sweat lodges before?

16 **A. Yes.**

17 **Q.** And did she tell you, hey? Don't be  
18 nervous?

19 **A. I don't recall.**

20 **Q.** Did you hear her telling Laura not to be  
21 nervous?

22 **A. I don't recall that.**

23 **Q.** Did you hear her telling Laura how to get  
24 through the sweat lodge?

25 **A. I recall her mentioning various ways to**

1 **sit.**

2 **Q.** Okay. Now, was she talking to you or  
3 just to Laura?

4 **A. She was mostly talking to Laura.**

5 **Q.** Okay. So she and Laura were having a  
6 conversation about how to get through the sweat  
7 lodge ceremony; correct?

8 **A. But then she turned her other direction**  
9 **and include other people in the conversation.**

10 **Q.** And the other people would be you, for  
11 instance?

12 **A. And the -- yeah.**

13 **Q.** And so she would say specifically -- you  
14 know -- put your hands in the dirt?

15 **A. No.**

16 **Q.** Did you discover that yourself?

17 **A. Yes.**

18 **Q.** And you discovered that by sticking your  
19 hands in the dirt, it was actually pretty cool?

20 **A. Underneath. Yes.**

21 **Q.** And that, in fact, it was nice and cool?

22 **A. It was very cool.**

23 **Q.** Okay. And so on direct examination I  
24 believe you told us that the first round was okay.

25 **A. Yes.**

1 **Q.** The second round was like being on the  
2 bottom bench of a sauna?

3 **A. The first round was like the bottom**  
4 **bench.**

5 **Q.** Okay. I apologize.

6 **A. The second round was the top bench.**

7 **Q.** All right. And then the third round had  
8 started to get unbearable?

9 **A. Started to get uncomfortable. Yes.**

10 **Q.** Okay. Uncomfortable. But that's not  
11 exactly what you told Detective Willingham on  
12 October 27. You told her something different,  
13 didn't you?

14 **A. I don't have the conversation memorized.**

15 **MR. LI:** Your Honor, I'd like to play  
16 Exhibit 644 at 1050 -- time stamp 1050 to 1123.

17 **Ms. Polk,** this is on the transcript at  
18 page 5, lines 14 through 21.

19 **MS. POLK:** Your Honor, the witness at this  
20 point has simply said she doesn't recall. There is  
21 not a specific question about a specific  
22 conversation. I would ask that the witness be  
23 allowed to refresh her recollection. Otherwise,  
24 this is simply hearsay.

25 **THE COURT:** I think in this instance 613(b)

1 permits explanation before extrinsic evidence would  
2 be admitted. At least in this instance, that's  
3 what I'm ruling.

4 **Q.** BY MR. LI: Ma'am, did you say, from  
5 round 3 on because it was nice and cool and I could  
6 dig my hands in and I could feel the cool  
7 underneath and it was just sort of concentrating on  
8 how cool it was -- you know -- half an inch down  
9 under the gravel?

10 Yeah. It just didn't -- yeah. It was  
11 just nice and cool. And I concentrated on my  
12 hands. And I think my hands -- not through the  
13 wall, but I think right under it because I could  
14 feel a breeze on my very fingertips occasionally.

15 Did you say that?

16 **A.** Yes.

17 **Q.** And, in fact, when you said it, you said  
18 it with a somewhat relaxed, explanatory tone;  
19 correct?

20 **A.** I don't know.

21 MR. LI: Your Honor, I'd like to play Exhibit  
22 644 at the time stamp.

23 MS. POLK: Same objection, Judge. It's  
24 hearsay.

25 THE COURT: Overruled.

1 You may play it.

2 MR. LI: Thank you.

3 (Exhibit 644 played.)

4 **Q.** BY MR. LI: So true or false? You were  
5 not saying that you were struggling from round 3  
6 on; correct?

7 **A.** I was saying that I was concentrating on  
8 the parts of me that were cool.

9 **Q.** And you said that it was nice and cool on  
10 your fingertips, and you could feel a breeze  
11 underneath the tent; correct?

12 **A.** Yes.

13 **Q.** You did not say that from round 3 you  
14 were struggling, did you?

15 MS. POLK: Your Honor, I would ask that the  
16 witness be provided with the transcript. These are  
17 excerpts being taken out of context. She's being  
18 asked to talk about an entire interview.

19 THE COURT: Sustained.

20 **Q.** BY MR. LI: Now, at some point Liz  
21 began -- you tried to help prop Liz up against your  
22 legs; correct?

23 **A.** Yes.

24 **Q.** And that's when it became too much --

25 **A.** Yes.

1 **Q.** -- correct?

2 And that's when you decided to scoot out  
3 the lodge?

4 **A.** Yes.

5 **Q.** Now, do you remember that in round 4 or  
6 5, Liz Neuman changed her position and sort of put  
7 her head closer towards the pit?

8 **A.** I don't recall.

9 **Q.** You don't have any reason to dispute  
10 that? Do you if, for instance, Ms. Tucker said  
11 that's what happened?

12 **A.** I -- honestly, I have no idea.

13 **Q.** Okay. Do you remember Ms. Tucker nudging  
14 Ms. Neuman to come back from the pit and that -- do  
15 you remember that?

16 **A.** No.

17 **Q.** Do you remember Liz Neuman shaking Laura  
18 Tucker off?

19 **A.** No.

20 **Q.** And do you remember at some point Liz  
21 Neuman changed her position again and sat with her  
22 feet towards the pit and started leaning back  
23 against Ms. Tucker?

24 **A.** I had my face in the dirt. I had no idea  
25 what Liz was doing.

1 **Q.** Okay. At some point in the seventh round  
2 you became concerned?

3 **A.** Yes.

4 **Q.** And do you recall Ms. Tucker touching Liz  
5 Neuman on the shoulder and saying, are you okay?

6 **A.** Yes.

7 **Q.** And do you recall Ms. Neuman saying, yes?

8 **A.** I remember Laura asking if she wanted to  
9 leave.

10 **Q.** Okay. Separate question. And we'll get  
11 to that. Do you remember the first part? Do you  
12 remember Ms. Tucker asking Liz Neuman, are you  
13 okay, and then Ms. Neuman saying yes?

14 **A.** I don't recall that.

15 **Q.** Do you recall Ms. Neuman saying, yes,  
16 promptly and without delay?

17 **A.** I don't recall --

18 **Q.** But do you have --

19 **A.** -- that exchange.

20 **Q.** Sorry.

21 **A.** I don't know.

22 **Q.** Do you have any reason to dispute if  
23 Ms. Tucker says that's what happened?

24 MS. POLK: Objection. Argumentative.

25 THE COURT: Sustained.

1 Q. BY MR. LI: You just didn't hear it?  
 2 A. **I was concentrating on my fingers.**  
 3 Q. I understand, Ms. Gennari.  
 4 A. **My entire being was concentrating on my**  
 5 **fingers. I don't know.**  
 6 Q. So my question simply is you don't recall  
 7 hearing that conversation?  
 8 A. **I don't know.**  
 9 Q. Okay. And at some point Ms. Tucker asked  
 10 Ms. Neuman, do you need to get out of here?  
 11 A. **Yes.**  
 12 Q. And that's when Ms. Neuman said, no. No.  
 13 No?  
 14 A. **Yes.**  
 15 Q. And I believe on direct on Friday you  
 16 said that she sounded like she was drunk.  
 17 A. **Yes.**  
 18 Q. And that she was slurring?  
 19 A. **Yes.**  
 20 Q. But that's not what you told  
 21 Detective Willingham on October 27, 2009, is it?  
 22 A. **I don't know.**  
 23 MR. LI: Your Honor, may I approach?  
 24 THE COURT: Yes.  
 25 MR. LI: You know what. I have the wrong

1 exhibit. Sorry.  
 2 Q. And I'd ask you to look at lines 2  
 3 through 6.  
 4 And, Counsel, that's at page 5.  
 5 Have you had a chance to review that?  
 6 A. **Yes.**  
 7 Q. Is your recollection now refreshed that  
 8 you did not say to Detective Willingham that she  
 9 sounded drunk?  
 10 A. **Yes.**  
 11 Q. And, in fact, the -- and you did not say  
 12 to Detective Willingham that she was drunk?  
 13 A. **No, I didn't.**  
 14 Q. And, in fact, the tone you used in --  
 15 when you said, what I heard was no, no, no, was not  
 16 the same slurring tone you used on direct  
 17 examination, was it?  
 18 A. **I don't know.**  
 19 MR. LI: Your Honor, I'd ask to play  
 20 Exhibit 644, clip 1017 through 42.  
 21 THE COURT: All right.  
 22 MR. LI: Your Honor, is it okay?  
 23 THE COURT: Yes.  
 24 MR. LI: Thank you. I'm sorry. I didn't  
 25 hear.

1 (Exhibit 644 played.)  
 2 Q. BY MR. LI: Now, at some point you  
 3 decided to leave the lodge; correct?  
 4 A. **Yes.**  
 5 Q. And then at that point you were told that  
 6 the round is over? You got to find a spot?  
 7 A. **Yes.**  
 8 Q. Okay. We'll get to that in a second.  
 9 Now, finishing off this conversation about  
 10 Ms. Neuman, you, in fact, did not know that  
 11 Ms. Neuman was dying, did you?  
 12 A. **No.**  
 13 Q. You absolutely did not know that she was  
 14 dying at that point, did you?  
 15 A. **No.**  
 16 Q. Had you known, you would have done  
 17 something; correct?  
 18 A. **I'd like to think so.**  
 19 Q. You'd like to think so. And isn't it  
 20 true that you told Detective Willingham that you  
 21 didn't know because you're not inside someone's  
 22 body and you can't hook them up to a computer like  
 23 they do with cars; correct?  
 24 A. **True.**  
 25 Q. And what you meant by that is that I

1 can't tell what anybody here is feeling better than  
 2 what they can tell to themselves; correct?  
 3 A. **True.**  
 4 Q. Only the person who is sitting there  
 5 actually knows how they're feeling; correct?  
 6 A. **If they're capable of knowing that, yes.**  
 7 Q. And that's what you meant by that. What  
 8 you meant was you can't hook a little device into  
 9 somebody -- like a computer -- and know how they're  
 10 feeling?  
 11 A. **Well, and I can't also determine whether**  
 12 **they are right about what they are reporting they**  
 13 **are feeling.**  
 14 Q. I understand that. But you don't know  
 15 one way or the another; correct?  
 16 A. **No.**  
 17 Q. And, in fact, you told  
 18 Detective Willingham, how do you know what's going  
 19 on in there; isn't that true?  
 20 A. **I don't specifically remember.**  
 21 Q. Would it refresh your recollection to  
 22 look at your -- the transcript of your interview?  
 23 This is page, Counsel, 23, lines 20  
 24 through 22.  
 25 May I approach?

1 THE COURT: Yes.

2 Q. BY MR. LI: Is your recollection now  
3 refreshed?

4 A. Yes.

5 Q. You did tell Detective Willingham that  
6 you're not inside someone's body and you can't hook  
7 them up to a computer like they do with cars? How  
8 do you know what's going on in there?

9 A. Yes.

10 Q. And what you mean simply is that you  
11 didn't know Liz Neuman was dying?

12 A. Right.

13 Q. Now, I want to ask you some questions  
14 about your testimony relating to the end of the  
15 sweat lodge ceremony. Now, I believe on direct  
16 examination you told Ms. Polk that at the end of  
17 the ceremony you blacked out?

18 A. Yes.

19 Q. And during your interview with  
20 Detective Willingham, about 11 months before your  
21 lawsuit, you discussed the end of the ceremony on  
22 at least three separate occasions during the  
23 interview.

24 Do you remember that?

25 A. Some of it.

1 Q. And you actually never mentioned blacking  
2 out?

3 A. No. It wasn't -- it wasn't until later  
4 that I realized I was missing time.

5 MR. LI: Your Honor, if I could play  
6 Exhibit 644, clip at -- not clip. At 1327 through  
7 1432.

8 This is page 6, Counsel, lines 21 through  
9 26.

10 MS. POLK: I'm sorry. What page?

11 MR. LI: Page 6, lines 21 through 26.

12 THE COURT: All right.

13 MR. LI: Thank you.

14 (Exhibit 644 played.)

15 Q. BY MR. LI: So in your conversation with  
16 Detective Willingham on October 27, 2009, 11 months  
17 before you filed your lawsuit, you didn't mention  
18 that you had blacked out?

19 A. I didn't know I had blacked out until I  
20 was going over the events with somebody else who  
21 pointed out that I had completely missed everybody  
22 else leaving.

23 Q. I guess the question is that you told  
24 Detective Willingham that you just sat there and  
25 waited for them to decide which row should go out,

1 the back row or the front row? Correct?

2 A. Yes.

3 Q. And then the two of you --

4 A. And that's the last thing I remember --

5 Q. And the two --

6 A. -- until opening my eyes and finding  
7 there were people behind me working to drag  
8 somebody out and nobody else was in the lodge.

9 Q. Okay. And then you and  
10 Detective Willingham had a little chuckle about  
11 that on the tape. Do you remember?

12 A. Yes.

13 Q. And then some people wanted to get some  
14 other people out first, and you said, no. No.  
15 No -- or wanted to get you out. And you said, no.  
16 No. No. Get somebody else. I have -- you know --  
17 I'm feeling the breeze and clean air.

18 A. Yes.

19 Q. That's what you told Detective Willingham  
20 on October 27, 2009; correct?

21 A. Yes.

22 Q. Now, a few minutes later in the same  
23 interview, you told Detective Willingham -- you  
24 described the end of the sweat lodge ceremony  
25 again. Do you recall that?

1 A. No.

2 Q. Well, and at that point you again did not  
3 mention blacking out?

4 A. Right. Like I said, I didn't know that I  
5 was missing time until much later.

6 MR. LI: I'd ask to play Exhibit 644, time  
7 stamp 1533 to 1630.

8 For Counsel it's page 8, lines 2 through  
9 16.

10 MS. POLK: Your Honor, hearsay. The witness  
11 has admitted.

12 MR. LI: I think the tone of the witness  
13 matters, Your Honor.

14 THE COURT: Overruled.

15 You may play that excerpt.

16 (Exhibit 644 played.)

17 Q. BY MR. LI: Ms. Gennari, in your  
18 statement to Detective Willingham on October 27,  
19 2009, you said, I'm here in the fresh air. I'm --  
20 you know -- pretty -- I'm okay; correct?

21 A. Yes.

22 Q. And finally you spoke to  
23 Detective Willingham a little later on in your  
24 interview. And again you mention the end of the  
25 sweat lodge ceremony. Do you remember that?

1 **A. (No audible response.)**  
 2 **Q.** And again you told her that you were  
 3 fine?  
 4 **A. Probably.**  
 5 MR. LI: Your Honor, I'd ask to play  
 6 Exhibit 644, time stamp 4225 through 4303.  
 7 Counsel, it's at page 21, lines 2 through  
 8 12.  
 9 MS. POLK: Same objection, Judge.  
 10 MR. LI: I think the tone matters, Your Honor.  
 11 THE COURT: Overruled.  
 12 You may play that excerpt.  
 13 (Exhibit 644 played.)  
 14 **Q.** BY MR. LI: Ms. Gennari, is it fair to  
 15 say that you told the people who were helping  
 16 people out of the sweat lodge that you said no?  
 17 I'm fine? I'm fine?  
 18 **A. I was trying to get them to take the**  
 19 **other people first.**  
 20 **Q.** Ms. Gennari, I'm asking you a simple  
 21 question. Is it true that you said to the people  
 22 who were helping people out of the sweat lodge, no?  
 23 I'm fine? I'm fine?  
 24 **A. Yes.**  
 25 **Q.** Is it fair to say that before this

1 lawsuit that you filed in September of 2010, you  
 2 had never mentioned to the police or to anybody  
 3 else that you had blacked out?  
 4 **A. I don't know.**  
 5 **Q.** You did not mention it to the police, did  
 6 you?  
 7 **A. Not in those early interviews.**  
 8 **Q.** You didn't?  
 9 **A. No.**  
 10 **Q.** Okay. Did you mention it later in a  
 11 separate interview to the police?  
 12 **A. I have no idea.**  
 13 **Q.** How many times have you met with the  
 14 police?  
 15 **A. I don't know.**  
 16 **Q.** One, two, three four, five times?  
 17 **A. I don't know.**  
 18 **Q.** You have no idea whether it's one or  
 19 five?  
 20 **A. I know it's not one. I don't think it's**  
 21 **five. I don't know. Everything was very foggy for**  
 22 **a lot of months after this.**  
 23 **Q.** And during those one to five times that  
 24 you met with the police, did you tell them that you  
 25 had blacked out?

1 **A. I don't know.**  
 2 **Q.** Is it fair to say that before you filed  
 3 this lawsuit on September 2010, you had said to  
 4 others that you were okay, that you were doing  
 5 fine?  
 6 **A. Well, that day I thought I was doing**  
 7 **fine. And that's what I told them.**  
 8 **Q.** And on October 27th when you were  
 9 interviewed by a detective with the Yavapai County  
 10 Sheriff's Office, you said that you had been fine;  
 11 correct?  
 12 **A. I repeated that I had told everybody I**  
 13 **was fine.**  
 14 **Q.** And, in fact, you said you had been fine;  
 15 correct?  
 16 **A. I thought I was.**  
 17 **Q.** You didn't mention blacking out?  
 18 **A. I didn't know that yet.**  
 19 **Q.** And you knew that this was part of a  
 20 homicide investigation -- a criminal homicide  
 21 investigation; correct?  
 22 **A. Yes.**  
 23 **Q.** And you did not tell the sheriffs that  
 24 you had blacked out; correct?  
 25 **A. I don't think so.**

1 MR. LI: Thank you, Ms. Gennari.  
 2 THE COURT: Redirect?  
 3 MS. POLK: Yes, Your Honor. Thank you.  
 4 May I proceed, Your Honor?  
 5 THE COURT: Yes.  
 6 REDIRECT EXAMINATION  
 7 BY MS. POLK:  
 8 **Q.** Ms. Gennari, I'm going to hand you  
 9 Exhibit 645, which is the transcript of the  
 10 interview that Mr. Li was playing excerpts from.  
 11 Let me leave that with you.  
 12 **A. Okay.**  
 13 **Q.** Let's start by going to page 7, lines 1  
 14 through 7.  
 15 **A. All right.**  
 16 **Q.** Let me ask you, first of all, do you know  
 17 how long this interview lasted for?  
 18 **A. No. It wasn't all that long.**  
 19 **Q.** Where were you when this interview took  
 20 place?  
 21 **A. Let's see. October 27th I would have**  
 22 **been at home on the couch.**  
 23 **Q.** And where was Detective Willingham?  
 24 **A. No idea. Other end of the phone.**  
 25 **Q.** Was she there?

1 **A. No.**  
 2 **Q.** Was this interview on the telephone?  
 3 **A. Yes.**  
 4 **Q.** And do you see on the caption it says,  
 5 length, one minute -- or one hour, three minutes  
 6 long?  
 7 **A. Yes.**  
 8 **Q.** Does that sound about right to you?  
 9 **A. Yeah.**  
 10 **Q.** Can you recount the events of the entire  
 11 week, including the events in the sweat lodge, in  
 12 one hour to anybody?  
 13 **A. Not likely. Not with extreme details.**  
 14 **Q.** And you just said that you were most  
 15 likely on the couch. Why do you think most likely  
 16 on October 27, which is less than 20 days after  
 17 your experience in Mr. Ray's sweat lodge -- why are  
 18 you saying most likely you are on the couch?  
 19 **A. When I got home -- when I left Angel**  
 20 **Valley, the people there had told me if I was still**  
 21 **feeling off or strange or not quite right when I**  
 22 **got home that I needed to go see a doctor. And so**  
 23 **I woke up at home still feeling not right, and I**  
 24 **took myself into urgent care. Urgent care gave me**  
 25 **fluids.**

1 MR. LI: Objection, Your Honor. We don't have  
 2 any medical records from this.  
 3 THE COURT: Overruled.  
 4 THE WITNESS: Did whatever that test is where  
 5 they put stickers all over you to see what your  
 6 heart is up to. And then they made me call a  
 7 friend to drive me across the street to the  
 8 emergency room where they did a bunch more tests to  
 9 me. And I saw my own doctor, and I was having  
 10 problems breathing. I was very --  
 11 **Q.** BY MS. POLK: And give us a time frame.  
 12 How soon after your experience in Mr. Ray's sweat  
 13 lodge ceremony are you talking about that you were  
 14 having trouble breathing?  
 15 **A. This would have been Sunday that I took**  
 16 **myself to Urgent Care.**  
 17 **Q.** Sunday following the Thursday that you  
 18 were in the --  
 19 **A. Yes.**  
 20 **Q.** -- tent?  
 21 **A. Yes.**  
 22 **Q.** Okay. And what happened between Thursday  
 23 and Sunday in terms of your physical condition?  
 24 **A. Well, Thursday --**  
 25 MR. LI: Your Honor, I apologize. If I can

1 just get the date. When exactly are we talking  
 2 about?  
 3 **Q.** BY MS. POLK: What happened between  
 4 Thursday, October 8, 2009, and Sunday -- you're  
 5 saying the Sunday immediately following?  
 6 **A. Yes.**  
 7 **Q.** And what happened in terms of your  
 8 physical condition?  
 9 **A. Thursday night after the sweat lodge I**  
 10 **went up to dinner along with everybody else and was**  
 11 **not feeling well. I described I was cold and**  
 12 **shaking, but my skin was giving off heat. I think**  
 13 **as much to convince myself as anything, I thought,**  
 14 **oh. Yeah. It's just like a bad sunburn. This**  
 15 **will go away.**  
 16 **And the next day I was slow and weak.**  
 17 **And I thought, well, we're all in shock. So**  
 18 **that -- I'm still thinking, okay. That's**  
 19 **explainable.**  
 20 **And then the following morning -- or that**  
 21 **night, rather, they had a gathering of all of us.**  
 22 **And they brought in -- I forget who she is. I**  
 23 **guess she's a channeler.**  
 24 MR. LI: Objection, Your Honor. Relevance  
 25 about channeling.

1 THE COURT: Sustained.  
 2 THE WITNESS: But we were all gathered, at any  
 3 rate.  
 4 MR. LI: Your Honor, there is no question  
 5 pending.  
 6 THE COURT: There is not a question  
 7 currently --  
 8 MS. POLK: Well, I can ask it. There is a  
 9 question, which is what happened in terms of her  
 10 physical condition?  
 11 **Q.** And you're now talking about Friday?  
 12 **A. Friday night.**  
 13 **Q.** So on Friday, were you still at Angel  
 14 Valley?  
 15 **A. Yes.**  
 16 **Q.** And you had planned originally to stay  
 17 that Friday night there as well?  
 18 **A. Yes.**  
 19 **Q.** And Friday night how were you feeling?  
 20 **A. Friday night while we were all gathered,**  
 21 **I started to feel dizzy, and my chest felt like it**  
 22 **was being cracked open. And at one point, I ended**  
 23 **up -- I had them put me on the floor because I**  
 24 **thought I was just going to go out.**  
 25 **Q.** Go out meaning what?

1 **A. Pass out. So they put me on the floor.**  
 2 **And once I thought I could sit up, they started --**  
 3 **they started pouring electrolytes down me.**  
 4 **Q.** And who are they?  
 5 **A. They were the Angel Valley staff who were**  
 6 **there.**  
 7 **Q.** Was anybody from James Ray International  
 8 attending to you?  
 9 MR. LI: Objection, Your Honor. Relevance.  
 10 THE COURT: Overruled.  
 11 You may answer that if you can.  
 12 THE WITNESS: I don't believe so. No.  
 13 **Q.** BY MS. POLK: And let me just back you  
 14 up, Ms. Gennari, to ask you this question: You  
 15 were in Mr. Ray's sweat lodge ceremony the entire  
 16 time?  
 17 **A. Yes.**  
 18 **Q.** And in terms of the 50-something  
 19 participants inside that sweat lodge, where were  
 20 you in terms of the order of leaving?  
 21 **A. I was, I guess, second to last. The last**  
 22 **person out was dragged by whoever the two people**  
 23 **were dragging the last person.**  
 24 **Q.** And yet afterwards when emergency  
 25 responders had come to the scene, you were never

1 taken to a paramedic at that time?  
 2 **A. No.**  
 3 MR. LI: Objection. Leading.  
 4 THE COURT: Sustained.  
 5 **Q.** BY MS. POLK: Did anybody -- did Mr. Ray  
 6 ever come to you to check on you --  
 7 MR. LI: Objection. Relevance.  
 8 **Q.** BY MS. POLK: -- being --  
 9 MR. LI: Sorry.  
 10 THE COURT: Sustained.  
 11 **Q.** BY MS. POLK: Did anybody from James Ray  
 12 International or the defendant check on you after  
 13 that sweat lodge ceremony was over?  
 14 MR. LI: Objection. Relevance.  
 15 THE COURT: Sustained.  
 16 **Q.** BY MS. POLK: Did you see any -- did you  
 17 get any medical attention on Thursday at any time  
 18 after the sweat lodge ceremony was over?  
 19 **A. No.**  
 20 **Q.** Did anybody ever direct you to get  
 21 medical attention that night?  
 22 MR. LI: Objection. Form of the question.  
 23 Relevance.  
 24 THE COURT: Overruled.  
 25 THE WITNESS: I recall somebody asking me if I

1 wanted to go to the hospital. At the time I had  
 2 come up with plausible explanations for how I felt  
 3 and didn't -- and also really, really didn't want  
 4 to end my vacation in the hospital.  
 5 **Q.** BY MS. POLK: Okay. So now we're up to  
 6 Friday night. And you started to tell the jury  
 7 you're at a gathering. You feel dizzy?  
 8 **A. Yeah.**  
 9 **Q.** And what happens?  
 10 **A. Well, I felt dizzy. I felt like I**  
 11 **couldn't move my arms and legs. I asked them to**  
 12 **put me on the floor. And they lowered me down to**  
 13 **the floor. And I was there for a while. And then**  
 14 **the Angel Valley staff brought me liquids and**  
 15 **started just having me guzzle liquids with**  
 16 **electrolytes.**  
 17 **And then the cook put together some**  
 18 **concoction. It was really strange and ugly. And**  
 19 **she said, you're going to drink that all night**  
 20 **long. When you finish one, you start the next one.**  
 21 **You just keep drinking that all night long. And I**  
 22 **did, which --**  
 23 **Q.** And did it help?  
 24 **A. Yes. That was -- that eased the pain in**  
 25 **my chest and made me -- I was still shaky. But I**

1 **wasn't in danger of dropping in my tracks, at least**  
 2 **that's how I felt.**  
 3 **And then in the morning I managed a**  
 4 **little bit of breakfast. I was still feeling woozy**  
 5 **and still being very careful about where I put my**  
 6 **eyes and how I focused on things and not looking at**  
 7 **moving objects. And the shuttle to the airport was**  
 8 **a challenge. I had to keep focusing so that I**  
 9 **wouldn't get dizzy.**  
 10 **And I got to the airport and got myself**  
 11 **the most gigantic hamburger I could find. I was**  
 12 **just dying for some, quote, unquote, real food.**  
 13 **And I finally got -- I got home. I went out to the**  
 14 **local drugstore and got some Pedialyte and started**  
 15 **chugging that, just continuing the electrolytes and**  
 16 **fluids, electrolytes and fluids. I drank that all**  
 17 **night.**  
 18 **Q.** What is Pedialyte?  
 19 MR. LI: Objection, Your Honor. Relevance.  
 20 THE WITNESS: I don't know.  
 21 THE COURT: Overruled. The answer stands.  
 22 THE WITNESS: On Sunday morning I was still  
 23 feeling -- I still didn't feel good. And I thought  
 24 that that's been too many days. Clearly I have not  
 25 recovered. So I took myself into Urgent Care.

1 Q. BY MS. POLK: And what tests did they do  
2 on you at Urgent Care?

3 MR. LI: Objection, Your Honor. We don't have  
4 records on this. It's a disclosure issue.

5 THE COURT: I do need to see counsel, please.  
6 (Sidebar conference.)

7 THE COURT: Okay. Just the whole line and the  
8 detail. I know there was some testimony about that  
9 on cross about feeling fine and things like that.

10 But your objection?

11 MR. LI: Your Honor, first of all, it's all  
12 hearsay. We don't have any medical records  
13 relating to this. In fact, what she tells the  
14 detective, which I didn't go into because the  
15 medical issue wasn't part of it, is that she says  
16 that there was no diagnosis of heat stroke. She  
17 didn't talk about heat at all. There was some  
18 issue perhaps with dehydration.

19 The real issue, Your Honor, the state's  
20 going to ask this witness to, basically, give her  
21 diagnosis. And we don't have any records on it.  
22 We don't have any way to cross it. It's literally  
23 just whatever she says. And that's a disclosure  
24 problem.

25 THE COURT: Ms. Polk, specifically relevant to

1 what aspect of cross?

2 MS. POLK: It's relevant to two aspects.  
3 First of all, Mr. Li attempted to establish that  
4 she was feeling fine --

5 THE COURT: That's what I mentioned.

6 MS. POLK: -- and that she is now making up  
7 all these other issues. And, in fact, there is  
8 going to be quite a bit of testimony about how she  
9 continues not to feel fine, and she goes to the  
10 doctor. And I don't have records on it either,  
11 Your Honor. Ultimately, she files a lawsuit.

12 So there is two issues. One is to  
13 directly rebut the suggestion that she's making up  
14 the fact that she got sick, to counter that, but  
15 also the lawsuit itself.

16 Mr. Li has opened the door to the facts  
17 underlying her reasons for filing the lawsuit.  
18 It's based on what she learns, then, from the  
19 doctor. And there is significant health issues  
20 that continue to follow her for many months, 11  
21 months, as Mr. Li constantly repeated in front of  
22 the jury, that lead her to file that lawsuit.

23 That door has been opened.

24 THE COURT: Mr. Li?

25 MR. LI: Your Honor, I disagree. Among other

1 things, it's the state's obligation, one, to find  
2 this lawsuit. But more importantly, we don't have  
3 any disclosure relating to what her medical  
4 condition is. There is no way to -- she's just  
5 going to say whatever she says. We don't have any  
6 records. The state could have found the records.  
7 They found records for everybody else, all the  
8 other people who are going to come in here and  
9 testify about their various medical conditions and  
10 what have you. They're supported by specific a  
11 doctor's finding.

12 This is a witness who has said a lot of  
13 things that, frankly, Your Honor, with all due  
14 respect, it's just untrue. And that's the purpose  
15 of cross-examination is to show -- demonstrate the  
16 places where the witness is not telling the truth.

17 One example, for instance, is all the  
18 various allegations in the lawsuit that she filed.  
19 There is no way to cross --

20 MS. POLK: Which Mr. Li opened the door to.

21 This witness can testify as to her  
22 reasons for filing the lawsuit, what her physical  
23 condition was, what her emotional condition was,  
24 and how that develops over the next few months  
25 leading to filing the lawsuit.

1 Your Honor, Mr. Li has repeatedly talked  
2 about the state's obligation. The law does not  
3 require the state to go out and find in California  
4 a lawsuit that was filed. The state did not know  
5 that this witness had filed a lawsuit. The defense  
6 intended to use it, did not disclose it to us, and  
7 the Court allowed it. I'm now allowed fair  
8 redirect to establish why she filed the lawsuit.

9 He has suggested that there is  
10 allegations in that lawsuit that are not true. And  
11 I'm allowed to develop and find out what the basis  
12 is for those allegations that are in the lawsuit.

13 MR. LI: She actually admits there are  
14 allegations in the lawsuit that are untrue. It's  
15 not just that I'm saying it. She admits it that  
16 it's untrue. That's the purpose of  
17 cross-examination.

18 THE COURT: Really -- it's really two  
19 different questions. That's what I'm having  
20 difficulty with. Someone feels they're injured,  
21 something happened, and then the question of  
22 liability and what they might say to say there is  
23 liability. They're not necessarily connected. And  
24 I --

25 MS. POLK: Mr. Li connected the two in trying

1 to establish with his cross that she was not  
2 injured in any way, that she was feeling fine.  
3 That allows us to talk about how she learns that  
4 she's not fine.

5 THE COURT: I see the relevance to that.  
6 Here's the thing: She can't give her own  
7 diagnosis. If she talks about going to the doctor  
8 and moving on ahead and doing these things and  
9 symptoms she actually felt, there can be some  
10 testimony along that. She obviously can't testify  
11 as to what was determined on the tests and those  
12 things.

13 MS. POLK: I haven't asked her that. She can  
14 talk about what she was feeling, why she went to  
15 the doctor and, based on what happens over the next  
16 few months, why she files her lawsuit.

17 MR. LI: I think the Court should not allow  
18 her to discuss her medical condition.

19 And I think there should be a very tight  
20 rein on this particular witness. She has a  
21 tendency to give a narrative response.

22 THE COURT: That's the other thing. The  
23 answers are coming in a narrative form, and you  
24 don't know what's going to happen.

25 But the testimony just along generally

1 following up on I feel fine, the fact that the  
2 lawsuit has been raised, the fact there has to be  
3 some relationship between issues.

4 And, again, the liability damage is  
5 separate. I don't think there should be a whole  
6 lot on this. But I think you can go through that  
7 and have her describe symptoms she felt.

8 MR. LI: Your Honor, I think, basically, it  
9 should be this: Did you feel that you had suffered  
10 medical issues? Yes. And as a result of that, did  
11 you file a lawsuit? Yes.

12 THE COURT: I think Ms. Polk can ask other  
13 questions besides that. I don't want to get into  
14 hearsay about specific diagnoses.

15 MS. POLK: I'll avoid hearsay.

16 Mr. Li is the one who tied the financial  
17 aspects of the lawsuit to her testimony, and I am  
18 allowed to go there to rehabilitate the witness.

19 And by the way, Mr. Li picked just  
20 various parts of that lawsuit. There is a lot more  
21 in that lawsuit that I can certainly go through  
22 when talking about her reasons for filing a  
23 lawsuit.

24 MR. LI: I don't know what the state means by  
25 that. Obviously, the rules of evidence would still

1 apply.

2 THE COURT: We're dealing with one issue at a  
3 time. In terms of her describing the physical  
4 condition, that's been put into issue on the  
5 cross-examination. And you can follow up on that.

6 Thank you.

7 (End of sidebar conference.)

8 THE COURT: Ms. Polk.

9 MS. POLK: Thank you.

10 Q. Ms. Gennari, on Sunday you went to urgent  
11 care?

12 A. Yes.

13 Q. And did you testify that tests were done  
14 on you at that time?

15 A. Yes.

16 Q. What tests were done?

17 MR. LI: Objection, Your Honor.

18 THE COURT: Overruled.

19 You may answer that.

20 THE WITNESS: Urgent care did -- I think, it's  
21 an EKG, the stickers. And they gave me an I.V. of  
22 fluids, which was heaven. And then they wanted to  
23 do some blood tests that they didn't have the  
24 equipment for. So they wanted me to go across the  
25 street to the emergency room.

1 Q. BY MS. POLK: And did you do that?

2 A. Yes.

3 Q. And were additional tests done at the  
4 emergency room?

5 A. Yes.

6 Q. What tests were done there?

7 A. **They did a more in-depth EKG, and they**  
8 **did -- they drew some blood and did some blood**  
9 **tests. I remember the nurse coming back and saying**  
10 **congratulations --**

11 MR. LI: Objection --

12 Q. BY MS. POLK: Now, without telling us the  
13 results --

14 THE COURT: Sustain that.

15 Q. BY MS. POLK: Without telling us the  
16 results of the tests -- how long were you at the  
17 emergency room?

18 A. Hours.

19 Q. Did you go home that night?

20 A. **Yes. I did go home that night.**

21 Q. And did you ever go back to the doctor  
22 again?

23 A. **I saw my own doctor on -- I think it was**  
24 **Tuesday.**

25 Q. And after that visit with your own

1 doctor, did you continue to see a doctor?

2 **A. Yes.**

3 **Q.** And without telling us what the doctor  
4 was telling you, over what period of time did you  
5 continue to see a doctor?

6 **A. I was in at least once a week for the**  
7 **next five or six weeks. And then it stretched out**  
8 **a little bit, like two weeks. But almost into --**  
9 **sometime in that first week, my doctor wrote me a**  
10 **note to be on disability. But she wanted to see me**  
11 **every week.**

12 **Q.** And let's talk about that for a moment.  
13 You've told the jury that you were employed and you  
14 were at a company. Did you end up not being able  
15 to go to work?

16 **A. Yes.**

17 **Q.** For what period of time?

18 **A. I was completely off for three weeks.**  
19 **And then I was on half time for two weeks.**

20 **Q.** What were the symptoms you were  
21 experiencing during those three weeks?

22 **A. Mostly that I was having a lot of trouble**  
23 **breathing. Even walking down the hall to the**  
24 **bathroom would make me out of breath.**

25 **Q.** Did there come a time when you were able

1 to return to work full time?

2 **A. Yes.**

3 **Q.** And when was that?

4 **A. Three weeks off and two weeks of half**  
5 **time, and then I went to full time.**

6 **Q.** Were you also having emotional issues?

7 MR. LI: Objection, Your Honor. Relevance.

8 Leading.

9 THE COURT: Overruled.

10 You may answer that.

11 THE WITNESS: Yes.

12 **Q.** BY MS. POLK: And describe those for the  
13 jury. Would you.

14 **A. I would -- I spent a lot of time crying.**  
15 **Random things would remind me or would trigger a**  
16 **memory of the sweat lodge, and I'd just go to**  
17 **pieces. I couldn't remember what I was doing half**  
18 **the time. I'd find myself in a room and have no**  
19 **idea how I got there or why. Or I'd be carrying**  
20 **something and I didn't know why I picked it up or**  
21 **what I wanted with that object. It was like my**  
22 **brain shut down.**

23 **Q.** What was the length of the relationship  
24 that you had with Mr. Ray and his events?

25 **A. A couple of years.**

1 **Q.** And why would you just randomly break out  
2 crying after you had been in his sweat lodge?

3 MR. LI: Objection. Relevance.

4 THE COURT: Sustained.

5 **Q.** BY MS. POLK: You were asked questions by  
6 Mr. Li where you indicated immediately following  
7 the sweat lodge, you were saying you were fine?

8 MR. LI: Objection. Misstates the testimony.  
9 The interview was from October 27, which was about  
10 three weeks after the medical things that this  
11 witness is discussing.

12 THE COURT: Sustained.

13 **Q.** BY MS. POLK: You were asked questions by  
14 Mr. Li about the interview that took place about  
15 three weeks after you were in Mr. Ray's sweat lodge  
16 ceremony and some specific questions and answers  
17 that you gave at that time. And I want to direct  
18 your attention to -- you have that transcript in  
19 front of you?

20 **A. Yes.**

21 **Q.** Look at page 7, first of all. First of  
22 all, have you had a chance to ever sit down and  
23 read this entire transcript of the interview?

24 **A. No.**

25 **Q.** And looking at page 7, you recall that

1 Mr. Li played a clip that had lines 1 through 7?

2 Do you recall that clip being played for you?

3 **A. Yes.**

4 **Q.** Could you go back to page 6. And  
5 starting at line 21, would you read that.

6 MR. LI: Your Honor, misstates the testimony.

7 Actually, the clip started at line 22 and played  
8 all the way through the next page at line 7.

9 THE COURT: Ms. Polk?

10 MS. POLK: Your Honor, my notes indicate that  
11 there was a clip played from page 7.

12 MR. LI: Your Honor, we can simply play the  
13 clip?

14 THE COURT: Is that what you're suggesting,  
15 Ms. Polk?

16 MS. POLK: No, Your Honor. I want to  
17 specifically ask her a question. And let me direct  
18 the question.

19 THE COURT: Okay.

20 MS. POLK: But I'd like to give the witness a  
21 moment, if I may, to actually read her own words.

22 THE COURT: Yes.

23 MS. POLK: Okay.

24 **Q.** So what I'd like you to do, Ms. Gennari,  
25 is look at page 6, read through the bottom of

1 page 6 and then through page 7. I'll give you a  
2 moment.

3 **A. Okay.**

4 **Q.** Have you had a moment to read through  
5 that?

6 **A. Yes.**

7 **Q.** You were asked specifically by Mr. Li why  
8 you never told anyone you blacked out?

9 **A. Yes.**

10 **Q.** And having read through that portion,  
11 page 6 to page 7, of your transcript, what do you  
12 recall telling the detective about what you did  
13 immediately following the end of the sweat lodge  
14 ceremony?

15 **A. That when it ended and the door opened, I**  
16 **just stayed still and that there was a discussion**  
17 **about which row should go. And I just still**  
18 **didn't -- I was still lying there.**

19 MR. LI: Your Honor, I'd move to strike all of  
20 this. She's simply paraphrasing what the  
21 transcript is. And we've actually played this  
22 exact tape. And I'd move to strike all of that.

23 THE COURT: Sustained.

24 **Q.** BY MS. POLK: Ms. Gennari, when you told  
25 the detective that, well, I finally -- I opened my

1 eyes and I saw there was no one to my right --

2 **A. Yes.**

3 **Q.** -- what do you remember about the period  
4 of time that your eyes were closed?

5 **A. Nothing. From the time that there was**  
6 **the front row, back row, then there is a big blank**  
7 **spot in my memory from there until when I opened my**  
8 **eyes.**

9 **Q.** And when you were interviewed by the  
10 detective, did the detective ask you follow-up  
11 questions about the period of time that your eyes  
12 were closed?

13 **A. No.**

14 **Q.** And, again, that interview was just an  
15 hour long?

16 **A. Yes.**

17 **Q.** Would you draw on here your final  
18 position in Mr. Ray's sweat lodge ceremony before  
19 that last --

20 **A. I was about there.**

21 **Q.** Okay. Show the jury how participants  
22 were told to exit if they had to get out between  
23 rounds.

24 And given your position up here, in what  
25 order should you have left Mr. Ray's sweat lodge

1 when it was over?

2 **A. I should have been right after the JRI**  
3 **team that was sitting in here.**

4 **Q.** Do you have any idea how long it took  
5 participants to get out of that tent when it was  
6 over?

7 **A. No idea.**

8 **Q.** Do you have any idea how many people were  
9 still in for that last round?

10 **A. No idea.**

11 **Q.** Do you have any recall today of other  
12 people leaving?

13 **A. No.**

14 **Q.** What's the last thing you remember before  
15 you closed your eyes?

16 **A. My eyes were closed from the time I hit**  
17 **the dirt down there. And while they were closed,**  
18 **the last thing I recall was hearing, front row,**  
19 **back row. You need to leave in an orderly fashion.**  
20 **And my brain was amusing itself with wondering**  
21 **which row I was in.**

22 **Q.** You don't remember anything after that?

23 **A. No.**

24 **Q.** Do you know what went first, the front  
25 row or the back row?

1 **A. No.**

2 **Q.** Do you have any memory of people crawling  
3 over you or around you?

4 **A. No.**

5 **Q.** Have you passed out in your life before  
6 being in Mr. Ray's sweat lodge ceremony?

7 **A. Once.**

8 **Q.** And how long ago was that?

9 **A. '91, '92, somewhere in there.**

10 **Q.** And on October 8th of 2009, when you were  
11 in this structure and it had ended, tell the jury  
12 what your next memory is.

13 **A. It ended. There was the discussion of**  
14 **which row, and then there is a big blank spot in my**  
15 **memory. And the next thing I remember was the**  
16 **woman picking up my hand.**

17 **Q.** Do you know how many minutes had passed  
18 since you blacked out until you feel a woman  
19 grabbing up your hand?

20 **A. No.**

21 **Q.** When that woman was there pulling at your  
22 arm, did you look around the tent?

23 **A. A little bit. Yeah.**

24 **Q.** And tell the jury what you saw then.

25 **A. I saw some people behind me trying to**

1 **drag somebody out.**

2 Q. Behind you? Point on here. What do you  
3 mean behind you?

4 A. **They were kind of over in this area.**

5 Q. Do you know who it was that was being  
6 dragged out?

7 A. **No, I don't.**

8 Q. Do you know who the people were that were  
9 trying to drag somebody out?

10 A. **No.**

11 Q. What direction were they trying to drag  
12 somebody out?

13 A. **I don't know. They were trying to get --  
14 they were working on getting handholds when I  
15 glanced over my shoulder. And then she got my  
16 attention again and said, they're going to take  
17 some time. Let's go. Let's get you out.**

18 Q. Did you notice anybody else in the tent  
19 at that time?

20 A. **No.**

21 Q. Do you believe there was anybody else in  
22 the tent?

23 A. **I don't think so.**

24 Q. Do you believe it had been cleared out  
25 except for you and one other person?

1 A. **Yeah.**

2 Q. Did you notice at that time whether or  
3 not the back of the lodge had been opened up?

4 A. **I don't remember it being open at that  
5 point.**

6 Q. And then Mr. Li played a clip. And if I  
7 could direct your attention to page 21. If you'll  
8 look at lines 1 through 9.

9 And that's where you stated during that  
10 interview with the detective, well, I got -- I  
11 think there were -- I think there were two people  
12 dragging another person behind me because I let the  
13 first dragged person go in front of me. And then  
14 I -- when the person outside came back to the door,  
15 I said, no. I'm fine. I'm fine. Get that person.  
16 That's more important. They need help.

17 Do you recall making that statement? As  
18 you sit here on the stand, do you recall making  
19 that statement when you were in the sweat lodge?

20 A. **Kind of. I remember seeing the person  
21 behind me and thinking they looked more important  
22 and that they should get them out first.**

23 Q. And what do you mean "they looked more  
24 important"?

25 A. **Like, I had my eyes open and was at least**

1 **looking around under my own power. And that person  
2 was not.**

3 Q. Was that person male or female?

4 A. **I don't know.**

5 Q. Did that person have their eyes opened or  
6 closed?

7 A. **I don't know. It was an impression that  
8 that was somebody who looked worse than I felt.**

9 Q. Do you recall today, as you testify, what  
10 about that person, about the way they looked, made  
11 you think they were worse off than you were?

12 A. **Well, people were trying to get handholds  
13 on the person, and the person wasn't helping, was  
14 like a rag doll.**

15 Q. Did you ever notice outside what happened  
16 to that person?

17 A. **I don't know.**

18 Q. When that ceremony ended, you talked  
19 about blacking out and then being woken up. What  
20 was your state of mind in terms of alertness after  
21 you were woken up?

22 MR. LI: Objection. Leading, form of the  
23 question.

24 THE COURT: Overruled.

25 You may answer that.

1 THE WITNESS: I was not very -- I was pretty  
2 dazed.

3 Q. BY MS. POLK: Then you were asked some  
4 questions by Mr. Li about your position in the  
5 sweat lodge when you were close to the area of Liz  
6 Neuman and whether you remember a conversation  
7 between Liz Neuman and Laura Tucker.

8 Do you recall that line of questioning?

9 A. **Yes.**

10 Q. If I can direct your attention to page 4  
11 of your transcript. And if you will look at lines  
12 23 through 28.

13 MR. LI: Your Honor, technically the state  
14 needs to ask a question. And then if the witness  
15 needs to have his or her recollection refreshed,  
16 then they look at the transcript. This is  
17 technically not correct.

18 THE COURT: Overruled.

19 You may examine the transcript.

20 Q. BY MS. POLK: Did you see that portion?

21 A. **Yes.**

22 Q. And in the portion that Mr. Li played the  
23 audio from, if you will look at page 5 beginning on  
24 line 1. If you will just look at that to refresh  
25 your recollection.

1 A. Yes.

2 Q. And if you will go back to page 4 and  
3 read for the jury what you said at lines 23 through  
4 28.

5 MR. LI: Your Honor, that's not -- I mean, I  
6 have no understanding of what part of the evidence  
7 code allows the witness to just read a transcript.

8 THE COURT: Ladies and gentlemen, we're going  
9 to take the afternoon recess at this time. Please  
10 remember the admonition. Please be back in the  
11 jury room at five after. That's about 20 minutes.

12 And then, Ms. Gennari, you're also  
13 excused for the recess as well.

14 I'm going to ask the parties to remain a  
15 moment.

16 Thank you.

17 (Proceedings continued outside presence  
18 of jury.)

19 THE COURT: I don't have the transcript. So,  
20 Ms. Polk, if I could ask --

21 MR. LI: Your Honor, may I approach?

22 THE COURT: Thank you.

23 The excerpt and the purpose of your  
24 offering it.

25 MS. POLK: Your Honor, counsel played from

1 page 5 the excerpt at the top of the page. And at  
2 that time I had asked under Rule 106 that he play  
3 an expanded audio, and the Court indicated that on  
4 redirect I could address it. And that's what I'm  
5 doing now.

6 THE COURT: And I'm looking at the -- there  
7 are some notes here that --

8 MR. LI: They're my notes.

9 THE COURT: Says clip 1 and clip 2. And  
10 you're referring to the top of page 5 the -- lines  
11 4 through 9?

12 MS. POLK: Yes, Your Honor.

13 THE COURT: And you're proposing to also  
14 play --

15 MS. POLK: I'd like to play -- or not play.  
16 Just have her read from page 4, lines 23 to 28.

17 MR. LI: Your Honor, if I may be heard?

18 THE COURT: Of course. I just want to see  
19 what we're talking about first, Mr. Li.

20 MR. LI: The line of questioning related to  
21 the tone of her voice and whether she told the  
22 detective that when Liz Neuman said no, no, no,  
23 that she sounded drunk, et cetera. And I had asked  
24 her whether or not she had told the detective that  
25 Liz Neuman sounded drunk. And that was the limited

1 cross-examination impeachment that we used that  
2 clip for.

3 It does not -- Rule 106 does not require  
4 the entire rest of the conversation because none of  
5 the rest of the conversation has anything to do  
6 with whether or not that particular witness told  
7 Detective Willingham on October 27 that Liz Neuman  
8 sounded drunk when she said no, no, no.

9 That was my line of questioning. It was  
10 also directed towards the tone of her voice when  
11 she told Detective Willingham about this exchange  
12 between Laura Tucker and Liz Neuman. It did not  
13 have anything to do with the various issues  
14 discussed in the earlier pages.

15 Moreover, just simply having the witness  
16 read aloud her transcript is not proper.

17 THE COURT: Well, it could be depending on  
18 context and --

19 MR. LI: I guess I would submit not in this  
20 context. Simply to just -- you know -- the only  
21 questions that were being asked related to whether  
22 or not she had told Detective Willingham that Liz  
23 Neuman had said no, no, no, in a drunken tone.

24 And I played the tape to show what she  
25 actually told Detective Willingham about Liz

1 Neuman's statement and also the tone she used to  
2 describe Liz Neuman's statements.

3 It had nothing to do with the prior  
4 business relating to where people were sitting and  
5 where Laura Tucker was sitting and whether -- you  
6 know -- whether people moved around in different  
7 positions and what have you.

8 There was a very limited purpose behind  
9 the cross-examination. And that's why we played, I  
10 think, a few seconds.

11 THE COURT: Ms. Polk?

12 MS. POLK: Well, two points, Your Honor. The  
13 first being that the defense never provided to the  
14 state any audio clips. We provided audio clips to  
15 the defense. We gave them an opportunity to ask  
16 that we expand them. And when they requested it,  
17 we did it.

18 These clips were not provided to the  
19 state in advance, and so my opportunity to actually  
20 play the audio clip as opposed to reading from the  
21 transcript simply isn't there. And it is  
22 appropriate for me to have the witness look at the  
23 transcript of that audio to have her explain the  
24 context of an audio.

25 The second point is that Mr. Li is

1 correct. He did try to make a point that her no,  
2 no, no, in the audio was different from her no, no,  
3 no, on the stand. But then he went on to make the  
4 second point, which was that Ms. Gennari did not  
5 know that Liz was dying and asked her several  
6 questions about that.

7 That expanded clip is the context for why  
8 Ms. Gennari did not know that Liz Neuman was dying,  
9 which was that she was really kind of foggy. She  
10 looked up. She sees Liz doesn't look good. She  
11 does a check on herself, and then she goes back to  
12 herself. I was 100 percent hanging on to me. That  
13 was not played. They began the clip at the end of  
14 round 7. And so that's the context that the state  
15 is entitled to bring out on redirect.

16 MR. LI: Two points, Your Honor.

17 THE COURT: Yes.

18 MR. LI: One is the state, when they provided  
19 the clips, were moving clips into evidence on  
20 direct examination. And those clips over our  
21 objection have been entered into evidence.

22 What we do on cross-examination, we  
23 literally could have just -- you know -- gotten it  
24 at the time stamp and played it, which is,  
25 essentially, what we did.

1 And the state -- you know -- has the  
2 exact same -- I mean, this is cross-examination and  
3 impeachment. We don't know necessarily what the  
4 witness is going to say, whether they're going to  
5 deny having made those statements or anything like  
6 that.

7 The second point is -- you know -- there  
8 is no rule of 106 relating to this particular clip  
9 because all we're talking about is the tone of  
10 voice when she said no, no, no, in describing  
11 Miss Neuman's conversation with Laura Tucker.

12 With respect to why Ms. Gennari didn't  
13 know that Liz Neuman was dying, that's not our  
14 point. We're not blaming anybody. The only point  
15 we're making is that nobody knew. And Ms. Neuman  
16 didn't know. Ms. Tucker didn't know. Mr. Caci  
17 didn't know. Nobody knew. Ms. Phillips right from  
18 the beginning of the case talking about other --  
19 the two other decedents didn't know.

20 That's the only point we're making is  
21 that folks didn't know who were sitting right next  
22 to the people who died. And that's all. We're not  
23 blaming anyone. We're not saying they're liable,  
24 they're bad. And so no explanation is necessary to  
25 explain why somebody didn't know. The fact is they

1 didn't know. Nobody knew.

2 THE COURT: The excerpt that the state  
3 proposes is really consistent with what has been  
4 testified to on direct. The question of  
5 Miss Gennari's observations of Liz Neuman came up  
6 on cross. And that's a legitimate area of  
7 redirect. It's not necessary or appropriate to  
8 expand the -- this particular excerpt.

9 But you can go into that on redirect,  
10 Ms. Polk.

11 But I don't -- this has been testified to  
12 with regard to one particular point that related to  
13 that excerpt. It doesn't really fill out the  
14 context --

15 MS. POLK: But, Your Honor --

16 THE COURT: Yes.

17 MS. POLK: Mr. Li has said the context was no,  
18 no, no. At least that's what he's saying in court  
19 now. At the time he played it, he said the no, no,  
20 no, and then went right into what she observed.

21 The state has through witnesses pointed  
22 out that witnesses who are close to the victims  
23 were themselves very impaired. And that is  
24 consistent with this witness also being impaired,  
25 unlike Mr. Ray who was not impaired.

1 So it's not an issue of because this  
2 witness couldn't perceive that Ms. Neuman was dying  
3 that Mr. Ray, therefore, could not perceive that.  
4 That's a completely different issue.

5 And what Mr. Li established with the clip  
6 and then went right into questioning was that you  
7 didn't perceive that she was dying. And the full  
8 context of that clip is that she was impaired. She  
9 was foggy. Here's what she heard at the time.

10 MR. LI: Your Honor, actually -- I mean, I  
11 have an outline of my questioning and where I went  
12 next with another statement that this witness made  
13 about how you're not inside somebody's body and you  
14 can't hook them up to a computer like they do with  
15 cars.

16 And we spent probably a few minutes on  
17 that issue, not before we went right to the sort of  
18 whether you're impaired or not. I mean, the  
19 question was -- we went right into her statement  
20 that she had made to the detective about almost --  
21 you know -- she's an intelligent lady.

22 It's almost -- you know -- sort of an  
23 existential point. You don't know what other  
24 people are feeling. And that's not -- I mean, I  
25 think the Court is correct that if the state wants

1 to ask questions about her mental state, they've  
2 already done it but they can do it some more. I  
3 don't think it's appropriate to have this witness  
4 simply just read back her transcript.

5 THE COURT: And, of course, the state's  
6 concern is the implication that might be left if  
7 this wasn't discussed with the officer at the time.

8 MS. POLK: Correct.

9 THE COURT: That's the point. And you're --

10 MR. LI: The state could just simply say, you  
11 told that to the detective. That would be fine.

12 THE COURT: And that's -- since it is  
13 consistent with what was indicated before Ms. Polk,  
14 you can cross-examine on this. To play the other  
15 point of the -- the other part of the transcript,  
16 no. I stand on that ruling. You can go into it on  
17 redirect and clear up if that was stated with the  
18 officer at the time also.

19 Thank you.

20 MR. LI: Thank you, Your Honor.

21 THE COURT: We'll be in recess.

22 (Recess.)

23 (Proceedings continued in the presence of  
24 jury.)

25 THE COURT: The record will show the presence

1 of Mr. Ray, the attorneys, the jury. And  
2 Ms. Gennari is on the witness stand.

3 Ms. Polk, when you're ready, you may  
4 continue with redirect.

5 MS. POLK: Thank you, Your Honor.

6 Q. Ms. Gennari, will you look at page 5 of  
7 the transcript of your interview with  
8 Detective Willingham on October 27th of 2009. And  
9 I'll direct your attention to the lines beginning  
10 with 1 through 6.

11 Do you recall when Mr. Li played that  
12 audio for the jury of that portion of your  
13 interview?

14 A. Yes.

15 Q. And you recall inside the sweat lodge  
16 when Liz Neuman was asked, do you want to leave --  
17 tell the jury in your words, using the tone that  
18 you heard Liz Neuman use, how did she respond.

19 A. She said, no, no, no. She sounded drunk  
20 to me.

21 Q. And at the time, did it seem to you that  
22 she sounded drunk. Or what do you recall thinking  
23 at the time?

24 A. Well, what I recall thinking is exactly  
25 what I told Detective Willingham, was I knew it was

1 her fifth time doing this. I thought, well, she  
2 knows what she's doing. She understands this  
3 situation better than I do.

4 Q. Did you believe that Liz Neuman was dying  
5 at that time?

6 A. No.

7 Q. Did you even think about it?

8 A. No. It never crossed my mind.

9 Q. And at that time what was your mental  
10 condition?

11 A. I was just really trying to focus, really  
12 trying to hang on to myself.

13 Q. During this interview with  
14 Detective Willingham, did you tell her what your  
15 mental condition at the time was?

16 A. Well, right before -- you know -- I said  
17 I was 100 percent hanging on to me.

18 Q. And looking back at the bottom of  
19 page 4 --

20 A. Yeah. I looked at Liz and thought she  
21 didn't look good. And then I checked in with  
22 myself and realized there was nothing I could do  
23 about that. I didn't have enough left.

24 Q. Have you ever pushed yourself like you  
25 were pushed in the sweat lodge?

1 A. I suppose there are times where I've  
2 pushed myself, not to the point where I was that  
3 uncomfortable, though.

4 Q. Will you look at page 17 of that  
5 transcript.

6 And do you recall when Mr. Li played the  
7 audio clip involving that meditation, the  
8 breathwork?

9 A. Yeah.

10 Q. Let me direct your attention to page 17,  
11 lines 6 through 14.

12 A. Yes.

13 Q. And you were asked that question  
14 specifically about your statement to  
15 Detective Willingham. All I'd have to do is open  
16 my eyes and look around the room and I'd be back to  
17 myself.

18 Do you recall that question?

19 A. Yes.

20 Q. If I can direct your attention to  
21 page 16, lines 19 through 24, and just have you  
22 look at that for a moment.

23 A. Yes.

24 Q. What did you tell Detective Willingham  
25 during this same interview about what that

1 breathwork did to you -- did to your mind?

2 MR. LI: Objection, Your Honor. I think the  
3 state needs to ask a question of the witness, and  
4 then if there is a problem, then the transcript  
5 comes in. I don't think she just gets to read from  
6 the transcript.

7 MS. POLK: Your Honor, I'm not asking her to  
8 read from the transcript. I'm asking her to tell  
9 the jury what she told Detective Willingham.

10 MR. LI: Just for the record, the last time  
11 counsel did that, the witness actually just read  
12 from the transcript for literally, like five  
13 minutes.

14 THE COURT: Overruled.

15 You may proceed, Ms. Polk.

16 Q. BY MS. POLK: What did you tell  
17 Detective Willingham during that interview about  
18 what that breathwork did to your mind?

19 A. That it put me into a weird state and  
20 that I thought it was -- I thought it was rather  
21 casual and safe because I hadn't seen any problems.

22 Q. You were asked some questions by Mr. Li  
23 about Mr. Ray's overall teachings. And you  
24 responded that you thought some teachings were  
25 useful and some not useful. And then you stated

1 you were currently having trouble finding anything  
2 useful. I want to ask you some questions about  
3 those teachings. Did Mr. Ray teach you that  
4 learning occurs on the border of chaos and order?

5 A. Yes.

6 Q. And what did that mean?

7 A. He would say that to us after giving us a  
8 lot of information rapid fire to the point where  
9 people were kind of overloaded and glazed, that it  
10 was more than they could take in. And then he  
11 would say that to justify using that delivery.

12 MR. LI: Objection, Your Honor. Move to  
13 strike on two grounds: One, what other people were  
14 thinking; and, two, her characterization of why  
15 Mr. Ray was doing things.

16 THE COURT: Sustained.

17 Q. BY MS. POLK: What did you understand  
18 about that teaching -- well, let me ask you this:  
19 Was that a teaching that you accepted at the time?

20 A. At the time, yes.

21 Q. And do you accept it today?

22 A. No.

23 Q. And why not?

24 A. I've done a little more reading and a  
25 little more investigation into how people actually

1 learn. And they actually don't -- from what I  
2 read, they actually don't learn very well when  
3 they're pushed that far, when they're overloaded.

4 Q. How was it that Mr. Ray overloaded you  
5 with teachings?

6 MR. LI: Objection. Relevance, Your Honor.

7 THE COURT: Overruled.

8 THE WITNESS: He would get into a very  
9 rapid-fire delivery with a lot of information  
10 coming really fast, I mean, where it was just  
11 faster than you could process it. Almost to the  
12 point for me sometimes where I would realize the  
13 gears in my head had just sort of stopped and I  
14 filled up and tried to catch up.

15 Q. BY MS. POLK: And did there come a point  
16 later when you tried to process what Mr. Ray had  
17 taught you, had said?

18 A. I actually didn't get back to a lot of  
19 those things and look at those teachings again  
20 until after the sweat lodge when I was trying to  
21 sort out my head.

22 Q. And later after the sweat lodge when you  
23 were trying to sort out what had happened, what did  
24 you come to realize?

25 MR. LI: Objection as to the form. I have no

1 idea where this is going to go.

2 THE COURT: Sustained.

3 Q. BY MS. POLK: You told Mr. Li that at the  
4 time you believed some of the teachings, but  
5 currently you're having trouble finding anything  
6 useful.

7 Do you find that teaching useful today?

8 A. No.

9 Q. And why not?

10 A. Because it's not true.

11 Q. What's not true?

12 A. It's not true that people learn when  
13 they're on the edge of chaos in their own minds,  
14 when they're overloaded.

15 Q. And is that not true for you?

16 A. That is definitely not true for me.

17 Q. Did Mr. Ray use a phrase, "keep the  
18 goggles on," as part of his teachings?

19 A. Yes.

20 MR. LI: Objection. Relevant.

21 THE COURT: Overruled.

22 Q. BY MS. POLK: In what context?

23 A. It was a story about the NASA study of  
24 people wearing goggles that would invert their  
25 vision so that they would see everything upside

1 down. And I don't remember how long it took, but  
2 there was something about -- it took a couple of  
3 weeks or thereabouts before their brains would  
4 compensate and flip the image back over.

5 Even though they were wearing these  
6 goggles that flipped things, they'd flip it back.  
7 And if they took them off for even a little bit of  
8 time, they would have to start the 15-day or 15 or  
9 whatever break-in period over again.

10 And he used the phrase to encourage us to  
11 keep ourselves immersed in his teachings and to not  
12 go back to our old way of thinking because -- with  
13 the implication being we would have to start over.

14 MR. LI: Objection. Move to strike as to the  
15 purpose and my client's intentions behind teaching  
16 her various things. Relevance. Move to strike.

17 THE COURT: Well, as to foundation where that  
18 came from, I'll sustain only as to foundation on  
19 that.

20 Q. BY MS. POLK: And then my next question,  
21 Ms. Gennari, was there a period of time that you  
22 believed that was one of the teachings of Mr. Ray  
23 that you believed?

24 A. At the time.

25 Q. And currently do you believe it?

1 A. No.

2 Q. And why not?

3 A. Well, because further investigation has  
4 shown me that a lot of --

5 MR. LI: Your Honor, move to strike as  
6 hearsay.

7 THE COURT: Sustained.

8 Q. BY MS. POLK: Without talking about your  
9 investigation, is that one of the teachings that  
10 you have trouble finding anything useful in today?

11 A. Yes.

12 Q. When you went into Mr. Ray's sweat lodge,  
13 was that a teaching that you believed?

14 A. Yes.

15 Q. How did that influence your actions in  
16 Mr. Ray's sweat lodge?

17 A. With the acceptance of that teaching, I  
18 also accepted that he knew how things should be  
19 done and that I should follow his advice and do  
20 things his way.

21 And when he said people were okay and  
22 he'd deal with them later, and when he said Liz  
23 knew what she was doing, I continued to accept that  
24 he knew what he was doing and I should follow what  
25 he said.

1 Q. You have already testified about the  
2 phrase that Mr. Ray used about playing full on.  
3 In 2009, in October when you were at Spiritual  
4 Warrior 2009, was that a teaching that you  
5 accepted?

6 A. Yes.

7 Q. Do you accept that today?

8 A. No.

9 Q. And why not?

10 MR. LI: Objection. Relevance.

11 THE COURT: Sustained.

12 Q. BY MS. POLK: Do you find that -- you  
13 made the statement to Mr. Li's questions that  
14 currently you're having trouble finding anything  
15 useful in his teachings. Do you find anything  
16 useful in Mr. Ray's teaching to play full on?

17 A. No.

18 MR. LI: Objection. Relevance.

19 THE COURT: Overruled.

20 You may answer it. And you did.

21 Q. BY MS. POLK: And you said no. And why  
22 not?

23 MR. LI: Objection. Relevance.

24 THE COURT: Overruled.

25 THE WITNESS: We learned that phrase in the

1 context of fully engaging in what he told us to do.  
2 And now I'm of the opinion that people should -- or  
3 that I have a much better idea of what is right for  
4 me than somebody else does.

5 Q. BY MS. POLK: In response to a question  
6 from Mr. Li, you said that this has been quite the  
7 journey figuring out things in my head.

8 Do you recall?

9 A. Yes.

10 Q. What did you mean when you said that?

11 A. The immediate aftermath of the sweat  
12 lodge pretty much shattered me emotionally,  
13 mentally and left me a lot of pieces to pick up.  
14 And as I have been working through the trauma,  
15 working through looking at the chain of events that  
16 led to the sweat lodge, a lot of -- a lot of things  
17 are becoming clear as to how this chain of  
18 events -- how I ended up in this series of events,  
19 how I ended up in the sweat lodge.

20 I'm starting to understand why I acted  
21 the way I did. I certainly would much rather be  
22 here telling you that I was the person that saved  
23 everybody because that would make me feel good. So  
24 I've had to understand why I was not that person.

25 Q. And in terms of that process -- your

1 process of figuring out why you acted the way you  
2 did, where were you in that process when you were  
3 interviewed by Detective Willingham on October 27th  
4 of 2009?

5 **A. I hadn't even started. I was still in**  
6 **shock. I was barely functional. I just spent most**  
7 **of my days either sleeping or crying. I didn't**  
8 **have the mental capacity to start figuring out**  
9 **anything at that point in time.**

10 **Q.** And tell the jury why you acted like you  
11 did inside the sweat lodge.

12 **A. Well, I was sleep deprived. I was**  
13 **hungry. I was thirsty. I was way too hot. I was**  
14 **very uncomfortable. And any one of those things**  
15 **leads to bad decisions. But you put all of five**  
16 **together, and you're stuck. You have no chance.**

17 **Q.** Did Mr. Ray's teachings of the week  
18 influence your actions inside the sweat lodge?

19 MR. LI: Objection. Leading.

20 THE COURT: Sustained.

21 **Q.** BY MS. POLK: What other factors of the  
22 events of Spiritual Warrior 2009 throughout the  
23 week affected your conduct inside the sweat lodge?

24 **A. Aside from my own greatly diminished**  
25 **mental capacity, I did -- when I looked at Liz, I**

1 **did -- it did run through my mind the phrase, let**  
2 **her have her own experience. And that is something**  
3 **I had learned from the teachings.**

4 **Q.** I'm going to hand you -- Ms. Gennari, I'm  
5 going to hand you Exhibit 784. Just take a moment  
6 and look at that document, if you would.

7 MR. LI: Your Honor, we'll stipulate to its  
8 admission.

9 MS. POLK: Your Honor, I'm not moving to admit  
10 it.

11 **Q.** You were asked questions by Mr. Li about  
12 a lawsuit that an attorney filed on your behalf; is  
13 that correct?

14 **A. Yes.**

15 **Q.** Do you recall when that lawsuit was  
16 filed?

17 **A. According to Mr. Li, it was September of**  
18 **last year.**

19 **Q.** Who prepared the lawsuit?

20 **A. Bob Bohn, my lawyer.**

21 **Q.** And did you read everything that your  
22 lawyer put in that lawsuit?

23 **A. No.**

24 **Q.** Did you even sign the lawsuit?

25 **A. No.**

1 **Q.** Do you recall how many meetings you had  
2 with your lawyer before he filed the lawsuit?

3 **A. One meeting and a few back and forth**  
4 **emails, but not much.**

5 **Q.** And do you know what investigation your  
6 lawyer conducted before he filed the lawsuit?

7 **A. I don't know.**

8 **Q.** Do you know if he hired a private  
9 investigator, for example?

10 **A. I don't know.**

11 **Q.** And do you know if he interviewed any  
12 other witnesses who had been at the sweat lodge in  
13 2009?

14 **A. I don't know.**

15 **Q.** And, Ms. Gennari, your testimony -- your  
16 presence here at this trial is pursuant to a  
17 subpoena that the state issued to you; is that  
18 correct?

19 **A. Yes.**

20 **Q.** You were asked a question by Mr. Li. I  
21 think he said to you, did you know that you could  
22 gain economic advantage in that lawsuit if Mr. Ray  
23 is found guilty in this case?

24 Did you even know that?

25 **A. No.**

1 **Q.** Do you even know if that's true?

2 **A. I don't know.**

3 **Q.** Are you a lawyer?

4 **A. No.**

5 **Q.** And do you know the legal terms used by  
6 your lawyer in this lawsuit?

7 **A. No.**

8 **Q.** Did that lawsuit influence your testimony  
9 in this case?

10 **A. No.**

11 **Q.** Do you know who the lawsuit was filed  
12 against?

13 **A. No. Not until I read it.**

14 **Q.** You did not file a lawsuit, for example,  
15 against Angel Valley?

16 **A. No.**

17 **Q.** You did not file a lawsuit against the  
18 person who built the sweat lodge that Mr. Ray  
19 conducted his ceremony in?

20 **A. No.**

21 **Q.** You did not file a lawsuit against the  
22 fire tender who heated the rocks?

23 **A. No.**

24 **Q.** And you did not file a lawsuit against  
25 the Hamiltons, the owner of Angel Valley?

1 A. No.

2 Q. You did not file a lawsuit against the  
3 paramedics or any of the first responders?

4 A. No.

5 Q. And what state was this lawsuit filed in?

6 A. California.

7 Q. Are you familiar, Ms. Gennari, with the  
8 legal requirements necessary in California to file  
9 this initial complaint setting forth your lawsuit?

10 A. No.

11 Q. Can I direct your attention to paragraph  
12 10 of the lawsuit. And therein it's stated that  
13 defendant, meaning Mr. Ray, and James Ray  
14 International, refused to disclose the event  
15 schedule or planned activities until plaintiff,  
16 that's you, and the other participants arrived in  
17 Sedona, Arizona, for the seminar.

18 What do you know about that?

19 A. It's partially true.

20 Q. What part of it is true?

21 A. We were not given a schedule. But some  
22 of the activities could be gleaned from the release  
23 document.

24 Q. In your experience as a participant at  
25 other James Ray events, is there a surprise element

1 to the events?

2 A. Yes.

3 Q. Has that been your experience at all the  
4 different seminars?

5 A. Pretty much. Yeah.

6 Q. Did Mr. Ray ever tell you why there was  
7 this surprise element?

8 A. No. But I do remember him thanking  
9 everybody once for not telling people what the  
10 surprise was at some events because that was part  
11 of the deal.

12 Q. If I can direct your attention to  
13 paragraph 11 where it states, upon arrival in  
14 Sedona on October 3rd, 2009, all participants were  
15 required to sign various documents for the program.  
16 No refunds were allowed.

17 A. Yes.

18 Q. Are you familiar with Mr. Ray's refund  
19 policy?

20 MR. LI: Objection. Relevance. Subject of a  
21 pretrial motion.

22 THE COURT: Sustained.

23 Q. BY MS. POLK: Has Mr. Ray's refund policy  
24 affected your attendance at seminars?

25 MR. LI: Same objection.

1 THE COURT: Overruled.

2 MR. LI: And relevance of what this particular  
3 witness's motivations are.

4 THE COURT: Overruled.

5 THE WITNESS: Yes.

6 Q. BY MS. POLK: And how so?

7 A. There were events I went to simply  
8 because I had paid for them. And when I discovered  
9 I was -- if I didn't feel like it or wasn't really  
10 into what he was doing, I would stay because I had  
11 paid for it.

12 Q. What was the refund policy?

13 MR. LI: Objection.

14 THE WITNESS: No refund.

15 THE COURT: Sustained.

16 Q. BY MS. POLK: Mr. LI asked you a line of  
17 questions about, well, why didn't you just leave.  
18 Why didn't you just leave Spiritual Warrior 2009?

19 A. Given not only my mental state but the  
20 fact that I had paid an enormous pile of money to  
21 be there, I -- you know -- I can't imagine I ever  
22 would have just got up and left.

23 Q. Well, why not just get your money back  
24 and leave?

25 MR. LI: Objection. Argumentative.

1 THE COURT: Sustained. Form of the question.

2 Q. BY MS. POLK: Let me direct your  
3 attention to paragraph 15 where it states,  
4 defendant, meaning Mr. Ray, and James Ray  
5 International, used group hypnosis on plaintiff and  
6 the other participants to prevent them from  
7 thinking rationally or taking steps for their own  
8 safety.

9 Will you explain.

10 A. These would be things like guided  
11 meditation, which would be, basically, guided  
12 hypnosis. Getting the group riled up around  
13 some -- like in the sweat lodge when everybody  
14 started chanting, you're more than that, you're  
15 more than that, to anybody who complained or said  
16 they wanted to leave.

17 And it just created this atmosphere of  
18 pressure and the setup of very little sleep and  
19 controlling when our breaks were and controlling  
20 our food. It all was -- it all put me off balance.  
21 I didn't have access to my normal processing.

22 Q. Now, you just testified that the guided  
23 meditation was, essentially, guided hypnosis?

24 A. Yes.

25 Q. How so? What do you mean?

1 MR. LI: Objection. I think this is calling  
2 for an opinion.

3 THE COURT: Sustained.

4 MR. LI: And, Your Honor, we move to admit the  
5 entire complaint under Rule 106 to complete this  
6 entire line of questioning.

7 THE COURT: Ms. Polk.

8 MS. POLK: Your Honor, the state does not  
9 believe this exhibit should be admitted. But it is  
10 Mr. Li who opened this line of questioning in his  
11 cross-examination.

12 THE COURT: It won't be admitted at this time.

13 Q. BY MS. POLK: Ms. Gennari, if I can  
14 direct your attention to paragraph 19. And this is  
15 a paragraph that Mr. Li read to you where it  
16 states, when plaintiff attempted to escape from the  
17 sweat lodge, the defendant, James Arthur Ray,  
18 blocked her passage with threats of offensive  
19 touching.

20 And you testified you do not believe that  
21 is true?

22 A. Yes.

23 Q. Did Mr. Ray ever, to your knowledge,  
24 touch you as you were attempting to leave the sweat  
25 lodge?

1 A. No.

2 Q. Do you know if that term "offensive  
3 touching" is a legal term under California law?

4 A. I don't know.

5 Q. Do you know what that term means --  
6 "offensive touching"?

7 A. Not legally.

8 Q. What did Mr. Ray do that prevented you  
9 from leaving his sweat lodge?

10 A. In a big, authoritative voice, he said,  
11 no. You're too late. We're starting again. Find  
12 yourself a spot.

13 Q. Did you believe you had a choice at that  
14 time to get out of his sweat lodge?

15 A. No.

16 Q. And why not?

17 A. His giant voice said no. In the state I  
18 was in, adding the scary voice, I did what the  
19 scary voice said.

20 Q. Were you conscious of the flap, then,  
21 being closed?

22 A. At some point.

23 Q. And once that flap was closed, to your  
24 knowledge, was there a way for you to get out?

25 A. No.

1 Q. And if I can direct your attention to  
2 paragraph 20. And I'm going to read the last three  
3 lines -- or actually, it's the last sentence of  
4 paragraph 20. It's written, by way of group  
5 hypnosis, sleep deprivation, and inadequate  
6 nutrition, the defendant incapacitated plaintiff,  
7 that would be you, so that in the extreme  
8 circumstances of the overheated sweat lodge,  
9 plaintiff was deprived of rational thought and was  
10 unable to help herself.

11 Would you please explain.

12 MR. LI: Your Honor, under Rule 106, I would  
13 ask that the prosecutor read the first sentence of  
14 paragraph 20 as well.

15 THE COURT: I need to see the counsel, please.  
(Sidebar conference.)

17 THE COURT: I understand that this was brought  
18 up on cross-examination. But this scrutiny into  
19 the complaint. There are elements of a prior  
20 inconsistent statement involved before, and now  
21 it's just going through the complaint.

22 And, Ms. Polk, I'm doing that to frame  
23 your explanation for why there is relevance to  
24 this.

25 Go ahead, please.

1 MS. POLK: Because Mr. Li has suggested that  
2 this witness is not telling the truth as she  
3 testifies today. He has set this complaint out  
4 there as a motive for her to lie, suggested that  
5 there is economic benefit to her if he is convicted  
6 in this case and has created this suggestion using  
7 this lawsuit that this witness is lying.

8 MR. LI: I'd ask the state to lower her voice.

9 THE COURT: You will get a chance.

10 MR. LI: That the state lower the voice a  
11 little bit. Thank you.

12 THE COURT: Thank you. Yes. Thank you.

13 MS. POLK: He went through. He picked and  
14 chose paragraphs here and there where there were  
15 inconsistent statements. He didn't touch all the  
16 other paragraphs where it's very consistent with  
17 her testimony.

18 I'm entitled to two things. One is to  
19 rehabilitate with everything that is consistent.  
20 No. 2, to explore the topic of the lawsuit and why  
21 she filed it, which I didn't address on direct  
22 because I had no notice from Mr. Li that he was  
23 going to do it because there was a discovery  
24 violation.

25 He went there. He spent a lot of time on

1 the lawsuit. And I'm now entitled talk to her  
2 about what's in the lawsuit and what her reasons  
3 were for filing it for two purposes. One is to  
4 rehabilitate, and the second is it's fair redirect  
5 on a topic that was raised in cross-examination.  
6 MR. LI: First of all, there is no discovery  
7 violation.

8 Second of all, the state can simply  
9 just -- we'll stipulate to admitting the entire  
10 complaint if that's what the state want's to do.  
11 Let's talk about the complaint. The jury can see  
12 every paragraph that this witness alleged.

13 Thirdly, what I did was entirely proper.  
14 I asked her whether she had ever said "X," and she  
15 said no. I put the complaint in front of her, and  
16 then she acknowledged that the statements in the  
17 complaint -- which were drafted on her behalf.  
18 There is no getting around that. Drafted on her  
19 behalf.

20 Before the break she said that she had  
21 read it. And she changed her testimony. Before  
22 the break she said she had read it, and then she  
23 had to admit on cross-examination that what was  
24 written in her complaint is untrue. That's classic  
25 impeachment.

1 What the state is currently doing is just  
2 sort of walking through the complaint and saying  
3 isn't this true and don't you believe in these  
4 allegations and what have you. Extrinsic evidence  
5 is not admissible to show a prior consistent  
6 statement.

7 THE COURT: Go ahead, Ms. Polk.

8 MS. POLK: Judge, first of all, before the  
9 break she never said she had read it. I believe  
10 before the break she said she had not read it all.

11 THE COURT: She said she read as much as she  
12 could stand.

13 MS. POLK: Exactly. She never said she read  
14 it all before the break.

15 Secondly, these are doors that were  
16 opened by Mr. Li, and the state is entitled to  
17 rehabilitate the witness.

18 The defense suggested that her testimony  
19 was not credible because she had an economic  
20 incentive, and then they picked a couple of  
21 paragraphs here and there written by her attorney,  
22 which she admitted on the stand are not true.

23 I'm entitled to rehabilitate her with  
24 that lawsuit, and I'm entitled to discuss why she  
25 filed the lawsuit, what is it about this event that

1 made her file the lawsuit.

2 He has suggested she has an economic  
3 incentive to lie. The state has the right to have  
4 her explain why she filed the lawsuit. And the  
5 explanation is all of these things during the week  
6 that caused her great emotional and physical  
7 distress are the reasons why she filed.

8 And I have a right to go through to show  
9 that there is plenty in that lawsuit that is true,  
10 is consistent with her testimony, and to explain  
11 why she filed the lawsuit.

12 MR. LI: There is no evidence code section  
13 called "opening the door." There has to be some  
14 specific evidentiary code that relates to the  
15 admissibility of particular types of questions. It  
16 is -- extrinsic facts are not admissible to prove a  
17 prior consistent statement.

18 I would submit if the state wants to get  
19 into the lawsuit, just admit it. Whatever the  
20 state --

21 THE COURT: The fact that inconsistent  
22 statements are brought out does not mean consistent  
23 statements come in from anywhere. But the other  
24 aspect is the suggestion that this -- there is  
25 motive and bias and that this lawsuit colors all

1 the testimony.

2 And so there is some reason to show  
3 that -- grounds to show that this person has a  
4 belief in the legitimacy of the lawsuit and the  
5 accuracy of the allegations.

6 But at this point there has been so many  
7 paragraphs brought up, it's almost to a point where  
8 you get into a recross situation. And your  
9 suggesting and would stipulate it should be just  
10 admitted? And why shouldn't it be at this point?  
11 Because it's so disjointed.

12 MS. POLK: Because these are -- this is the  
13 beginning of a lawsuit. I don't know what else is  
14 in the lawsuit. I don't know if there was an  
15 answer filed by the defendant that admitted some of  
16 this, that denied some of this. I don't even know  
17 the stage because there was no disclosure to the  
18 state. We didn't even know there was a lawsuit  
19 filed.

20 I want to point out this investigation  
21 was done and the indictment filed in February 2010.  
22 This lawsuit is filed months later in September  
23 of 2010 after these witnesses have been interviewed  
24 and no disclosure to the state by the defense. We  
25 could have litigated all these issues in an

1 appropriate forum if they had complied with the  
2 rules. So here we are at sidebars and at breaks  
3 trying to litigate this issue.

4 I won't spend a whole lot more time on  
5 the lawsuit. I don't believe it should come in. I  
6 don't think the jury is the appropriate body to be  
7 looking at a legal filing and understand what it's  
8 about.

9 THE COURT: Well, it's coming in piecemeal, a  
10 bit at a time at this point.

11 MS. POLK: On the legal theories.

12 THE COURT: I need to ask you something you  
13 said twice. You apparently knew that some people  
14 had filed lawsuits but not this person? Is that  
15 what you're saying? Because I thought you knew  
16 this person had filed a lawsuit.

17 MS. POLK: We did not, Your Honor. We knew  
18 from the media that the victims had filed lawsuits.  
19 We learned from the defense attorneys when they did  
20 interviews of witnesses because they questioned  
21 them about lawsuits. Then we learned about  
22 lawsuits.

23 But these -- none of these witnesses had  
24 filed lawsuits before we filed our indictment. So  
25 these are, like this one, filed long after these

1 witnesses were interviewed by the detectives. We  
2 just didn't know.

3 MR. LI: Your Honor, for the record, the state  
4 is well aware that there have been lawsuits.  
5 They've been communicating with plaintiffs' lawyers  
6 among other things.

7 Detective Diskin himself at some  
8 interview of some witness talked with Ms. Do about  
9 a mediation that had taken place between various of  
10 the parties. The state is well aware of that.

11 THE COURT: Talking about this particular  
12 witness, Mr. Li?

13 MR. LI: I can't speak to what the state's  
14 knowledge is, Your Honor.

15 MS. POLK: I can. We didn't know she had  
16 filed.

17 MR. LI: They could just ask.

18 THE COURT: First of all, you have gone into  
19 the lawsuit considerably, Ms. Polk, and the idea  
20 that this person believes it's a legitimate  
21 lawsuit. The defense has pointed out inconsistent  
22 statements. For this particular ruling, yes, the  
23 whole paragraph can be read in context. It's all  
24 in one paragraph, one allegation. And you can go  
25 into that.

1 But other than -- I don't know if you  
2 need to really get into it any further. General  
3 questions about the belief in the lawsuit or  
4 something, I think that's fine. But this  
5 dissecting this legal document any further is not  
6 appropriate. That level of scrutiny, the defense  
7 did present this really in the context of an  
8 inconsistent statement.

9 I agree they went beyond that and said,  
10 overall motive and bias maybe suggesting it's  
11 frivolous or something. You can go into some  
12 general questions about that. With regard to this  
13 paragraph, though, I'm going to order that the  
14 entire paragraph be read.

15 (End of sidebar conference.)

16 THE COURT: Ms. Polk, when you're ready.

17 Q. BY MS. POLK: Ms. Gennari, if you'd look  
18 at paragraph 20. Let me read to you the first  
19 sentence. While in the sweat lodge of October 8th,  
20 2009, plaintiff attempted to escape the lodge but  
21 was prevented from doing so by defendant, James  
22 Arthur Ray, who physically touched her in an  
23 offensive way thereby causing her to suffer severe  
24 personal injuries and extreme emotional distress.

25 Let me ask you, first of all, did Mr. Ray

1 physically touch you as you attempted to escape his  
2 sweat lodge?

3 A. No.

4 Q. And the statement is he physically  
5 touched you in an offensive way. Do you know  
6 whether or not that is a legal term under  
7 California law?

8 A. I don't know.

9 Q. And then the second sentence is the one I  
10 had just read. By way of group hypnosis, sleep  
11 deprivation, and inadequate nutrition, the  
12 defendants incapacitated plaintiff so that in the  
13 extreme circumstances of the overheated sweat  
14 lodge, plaintiff was deprived of rational thought  
15 and was unable to help herself.

16 A. Yes.

17 Q. Is there anything about that statement  
18 that is false?

19 A. No.

20 Q. And then if you'll look at paragraph 28,  
21 it states, defendants in each of them --

22 MR. LI: Your Honor, I renew our request to  
23 just admit the entire exhibit.

24 THE COURT: If there is further questioning in  
25 that regard, I am going to force a stipulation,

1 essentially, if there is going to be more  
2 questioning through the complaint.

3 MS. POLK: Your Honor, I would like to  
4 question her further about it.

5 THE COURT: Then there will be -- I'm going to  
6 force a stipulation and admit the exhibit, then.

7 MR. LI: Thank you, Your Honor.

8 MS. POLK: That's fine, Your Honor. Thank  
9 you.

10 THE COURT: Then I need the number on the  
11 exhibit. My copy doesn't. Can I have the number,  
12 please?

13 MR. LI: And we'd like recross, Your Honor.

14 MS. POLK: Your Honor, the state would object  
15 to that.

16 THE COURT: I'm not granting that at this  
17 point.

18 But, Ms. Polk, the number, please.

19 MS. POLK: It's Exhibit 784.

20 THE COURT: Exhibit 784 is admitted.

21 (Exhibit 784 admitted.)

22 Q. BY MS. POLK: And if you will look at  
23 paragraph 28. Actually, I can put it up on the  
24 overhead.

25 Do you see Exhibit 28? I'm sorry.

1 Paragraph 28?

2 A. Yes.

3 Q. Where it states, defendants in each of  
4 them negligently and carelessly subjected plaintiff  
5 and others without proper monitoring or safeguards  
6 to dangerous levels of heat in the sweat lodge  
7 without adequate nutrition or liquids, thereby  
8 directly and proximately causing plaintiff to  
9 suffer severe physical and psychological injuries.

10 Miss Gennari, what are the severe  
11 physical injuries that you suffered?

12 A. **I had breathing problems, some heat  
13 exposure, damage to my lungs. And my kidney  
14 function was affected.**

15 MR. LI: Your Honor, move to strike. Hearsay.  
16 This is all self-diagnosis.

17 THE COURT: Sustained.

18 Granted as to motion to strike.

19 Q. BY MS. POLK: Did you suffer  
20 psychological injuries?

21 A. Yes.

22 Q. Now, I want to direct your attention to  
23 paragraph 34. I'm not going to read the whole  
24 thing, but I want to look at the bottom where it's  
25 written, defendant's promised to heighten

1 plaintiff's creative intelligence, intuition, and  
2 mental functioning to deepen her personal  
3 relationships and to ramp up her ability to attract  
4 people, to achieve financial freedom, and to  
5 maximize her health and energy and to amplify her  
6 physical strength.

7 Were those promises made to you by  
8 Mr. Ray?

9 A. **Yeah. That was from the marketing  
10 materials.**

11 Q. What marketing materials are you  
12 referring to?

13 MR. LI: Objection. Relevance, subject to the  
14 pretrial ruling.

15 THE COURT: Sustained.

16 Q. BY MS. POLK: Will you look at  
17 paragraph 36 where it states, defendants  
18 intentionally inflicted severe emotional distress  
19 upon plaintiff and others in order to make them  
20 feel ever more in need of defendant's solutions for  
21 a successful life.

22 Did that occur at Spiritual Warrior 2009?

23 A. Yes.

24 Q. And will you explain how.

25 MR. LI: Objection. Relevance. This is a

1 plaintiff's civil complaint for money.

2 THE COURT: Sustained.

3 Q. BY MS. POLK: Why did you file a lawsuit  
4 against Mr. Ray?

5 A. **I have a lot of medical bills piled up.  
6 And I felt like to some extent it was my duty to  
7 make as big a noise as possible so that this never  
8 happens to anybody again.**

9 Q. And why do you feel that way?

10 MR. LI: Objection. Relevance.

11 THE COURT: Sustained.

12 Q. BY MS. POLK: I want to show you -- have  
13 you look at Exhibit 784, paragraph 42. Defendant  
14 is imposing intentional infliction of -- defendants  
15 in imposing intentional infliction of emotional  
16 distress upon, plaintiff, acted with malice,  
17 oppression, and fraud; and, plaintiff submits, that  
18 by way of punishment and example and to prevent  
19 future conduct by defendants.

20 Is that what you are referring to?

21 A. Yes.

22 Q. That was one of your reasons for filing  
23 the lawsuit?

24 A. Yes.

25 MR. LI: Objection. Leading.

THE COURT: Sustained.

Q. BY MS. POLK: I want to ask you just a couple of questions about inside Mr. Ray's sweat lodge ceremony. You testified in response to a question from Mr. LI that the Dream Team members were told to sit at the four cardinal directions?

A. Yes.

Q. Who told them to sit there?

A. Mr. Ray.

Q. And you testified that you think the pit was off center?

A. Yes.

Q. What do you recall about that?

A. I think it was a little closer to the back than the center.

Q. And then you were asked several questions about your choice -- your choice to leave the events of the week, your choice to leave the sweat lodge when you wanted?

A. Yes.

Q. You answered that you could leave only if I were to override all the reasons you were there. Would you explain that statement to the jury.

A. Well, I was there to get to another level, to break through some barriers. And to that

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end, I was committed to doing everything placed in front of me. You know, I -- I made a commitment of money and time and effort, and I wanted everything I could get out of that.

Q. And how is your physical condition today?

MR. LI: Objection. Asked and answered.

THE COURT: Overruled.

THE WITNESS: Well, I'm certainly not back to where I was before. I no longer need medication for my lungs. I'm not as -- I still get winded easily. And in chorus I breathe more than I ever used to because I -- it's like when I do take a breath, it's not as useful as it should be.

Q. BY MS. POLK: And psychologically or emotionally how are you today?

MR. LI: Objection, Your Honor. Relevance.

THE COURT: Overruled.

THE WITNESS: Pretty delicate and messy.

MS. POLK: Thank you, Ms. Gennari.

Thank you, Your Honor.

THE COURT: Members of the jury, do any of you have any questions for this witness?

JURY FOREMAN: We do have a question.

THE COURT: Ms. Gennari, I'll ask that you remain, please, while I go over the jury questions.

Counsel, if I could please see you up here.

(Sidebar conference.)

MR. LI: Your Honor, I would make a motion under 15.1(g) for her medical records and bills before the witness is excused. That's all.

THE COURT: Then she won't be excused technically. If that's --

MR. LI: We need -- we would like her medical records and bills under 15.1(g).

THE COURT: Ms. Polk?

MS. POLK: Your Honor the state does not have any of that. I believe that the defendant has it. He is a party to that lawsuit. The state knows very little about -- but I have no objection to not excusing this witness if the Court wants to hear argument on this motion at a later date.

THE COURT: That's the only way I can preserve it.

MR. LI: I just want to preserve it.

THE COURT: Here's the question, though, for the attorneys.

MR. LI: No objection.

THE COURT: Mr. LI?

MS. POLK: The state has no objection.

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THE COURT: Thank you.

Attorneys have no objection.

(End of sidebar conference.)

THE COURT: Ms. Gennari, I will ask the questions. The attorneys may choose to follow up. And there are two questions here. And I'll ask them separately.

Did you testify on Friday that you and others went shopping in Sedona on Friday following the sweat lodge ceremony?

THE WITNESS: Yes.

THE COURT: Follow up, Ms. Polk?

MS. POLK: Yes, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MS. POLK:

Q. What was your mental condition at that time?

A. Dazed.

Q. And what do you mean?

A. I barely saw anything when we went to -- I barely saw anything that I saw, so to speak. I kind of mindlessly and very numb and very in shock walked in and out of almost every store just kind of looking at the shiny objects and dazed.

Q. Whose idea was it to go shopping?

1 **A. My friend Laura wanted to go into town.**

2 **She wanted to get away from Angel Valley.**

3 **Q.** And what was your physical condition at  
4 that time?

5 **A. Slow and weak and tired, but still kind**  
6 **of running on shock.**

7 **Q.** Thank you.

8 Thank you, Judge.

9 THE COURT: Thank you.

10 Mr. Li?

11 MR. LI: Yes, Your Honor.

12 **RE-CROSS-EXAMINATION**

13 **BY MR. LI:**

14 **Q.** While you were slow, tired, and running  
15 on shock, you went shopping in Sedona?

16 **A. Yes.**

17 **Q.** Did you go to art galleries?

18 **A. I don't think so.**

19 **Q.** Did you go to curio shops?

20 **A. Yeah.**

21 **Q.** Crystals, all of those sorts of things?

22 **A. I don't remember. The touristy things.**

23 **Q.** Touristy things. After the incident in  
24 which two people passed away, you went shopping;  
25 correct?

1 **A. Yes. To get away from Angel Valley.**

2 **Q.** Thank you.

3 Nothing further.

4 THE COURT: How long were you shopping in  
5 town, Sedona, on that Friday?

6 THE WITNESS: We had lunch and wandered around  
7 for maybe a couple of hours.

8 THE COURT: Ms. Polk, follow-up questions?

9 MS. POLK: No, Your Honor. Thank you.

10 THE COURT: Mr. Li?

11 MR. LI: No, Your Honor.

12 THE COURT: Thank you.

13 And, Ms. Gennari, you will be excused  
14 from the trial at this time, but you are not going  
15 to be completely excused. You are subject to  
16 recall. So that's possible.

17 The rule of exclusion of witnesses  
18 remains in effect. And do you recall the  
19 discussion I had with you about that --

20 THE WITNESS: Yes.

21 THE COURT: And the importance of not  
22 discussing the case or your testimony with any  
23 other witness until the trial is completely over  
24 and not communicating with other people who might  
25 relay testimony or something you might say or think

1 about the case to another witness, avoiding any  
2 media exposure as well.

3 So with all that in mind, you are excused  
4 temporarily at this time.

5 And I'm going to ask Ms. Rybar, before  
6 you bring the next witness in, I do want to address  
7 the parties and the jury a moment.

8 So you are excused at this time, ma'am.

9 Thank you.

10 So before the next witness is called,  
11 ladies and gentlemen, I just wanted to address a  
12 couple of questions or concerns that had come to me  
13 from the jury.

14 First, there was mention of a witness  
15 list and providing a witness list. And I do recall  
16 that. Back during jury selection I indicated that  
17 a witness list would be provided. My purpose in  
18 that was to give you something to see because there  
19 is a considerable number of witnesses. And I  
20 wanted to make sure that if anybody knew one of  
21 those witnesses or thought you knew a witness, you  
22 could actually be reading a name and not just  
23 listening to me read all the names. That was my  
24 reason for doing that.

25 However, with the discussions I've had

1 among parties, it turns out that really the  
2 witnesses are, for the most part, not local. It's  
3 very unlikely that any of you would know them. So  
4 it was just decided not to give you a witness list.  
5 So that's why you didn't get the witness list.

6 It's not anticipated that the people on  
7 the list -- or all the people will be called. I'll  
8 tell you that. But I'm not going to be providing  
9 the witness list. And I hope that provides the  
10 explanation for why I indicated that I would in the  
11 first place.

12 The other matter is not really a  
13 question, but it has to do with the admonition.  
14 And, once again, I thank you for following the  
15 admonition so closely. And we have this system  
16 where you provide notes if there is a possible  
17 incident.

18 And that is what this was. It was a  
19 possible incident. It was handled exactly  
20 correctly. The attorneys have seen the note. And,  
21 again, thank you. That's exactly what we're  
22 asking. But that's not an issue of concern in  
23 light of your explanation.

24 So with that, Ms. Polk, if you would call  
25 the next witness.

1 MS. POLK: The state calls Melinda Martin,  
2 please.

3 THE COURT: Ma'am, if you would please step to  
4 the front of the courtroom where the bailiff is  
5 directing you and raise your right hand to be sworn  
6 by the clerk.

7 MELINDA MARTIN,  
8 having been first duly sworn upon her oath to tell  
9 the truth, the whole truth, and nothing but the  
10 truth, testified as follows:

11 THE COURT: Please be seated here at the  
12 witness stand.

13 Would you please begin by stating and  
14 spelling your full name.

15 THE WITNESS: Melinda Martin, M-e-l-i-n-d-a,  
16 Martin, M-a-r-t-i-n.

17 THE COURT: Thank you.

18 Ms. Polk.

19 MS. POLK: Thank you.

20 DIRECT EXAMINATION

21 BY MS. POLK:

22 Q. Good afternoon, Miss Martin.

23 A. Good afternoon.

24 Q. I'm Sheila Polk. You and I have spoken  
25 on the phone?

1 A. Uh-huh.

2 Q. Thank you for being here. Will you start  
3 by telling the jury what community you live in?

4 A. Now?

5 Q. Yes.

6 A. New York City.

7 Q. What do you do in New York City?

8 A. I'm in real estate.

9 Q. How long have you been in real estate  
10 there?

11 A. Probably about four months now just in  
12 New York City.

13 Q. Prior to moving to New York, what  
14 community were you living in?

15 A. I was living in Carlsbad, California.

16 Q. How long did you live in Carlsbad,  
17 California, for?

18 A. For a little less than a year.

19 Q. Prior to Carlsbad, California, where did  
20 you live?

21 A. I lived in Mexico for a short time.

22 Q. Did there come a time that you were hired  
23 by Mr. Ray to work for his company?

24 A. Yes.

25 Q. How was it that you learned that Mr. Ray

1 needed an employee?

2 A. They had placed an advertisement that I  
3 answered.

4 Q. What was the name of his company?

5 A. James Ray International.

6 Q. Do you recall what he was advertising  
7 for?

8 A. An event coordinator.

9 Q. You had an interview?

10 A. Yes.

11 Q. Who did you interview with?

12 A. Megan Fredrickson.

13 Q. Did you get hired at that time?

14 A. Yes. I interviewed a couple of times.

15 Q. You came back for another interview?

16 A. Yes.

17 Q. Who with?

18 A. Megan Fredrickson.

19 Q. Approximately when was it that you got  
20 hired to work for James Ray International?

21 A. I believe it was February of 2009.

22 Q. How long did you work for James Ray  
23 International?

24 A. I worked from then until the event --  
25 this event, until October of 2009.

1 Q. October of 2009?

2 A. Yes.

3 Q. Where was your office when you worked for  
4 James Ray International?

5 A. It was in Carlsbad, California.

6 Q. Did you move to Carlsbad specifically to  
7 work for Mr. Ray?

8 A. Yes.

9 Q. Will you explain to the jury what the job  
10 entailed as an event coordinator.

11 A. I organized all of the events. I  
12 contacted the hotels. I hire people locally to  
13 help with -- you know -- various aspects of the  
14 event. I coordinated everything that went along  
15 with the syntax, organized the room itself -- you  
16 know -- the lighting -- you know -- that kind of  
17 thing. I kind of organized every logistical aspect  
18 of the event.

19 Q. What prior experience had you had that  
20 qualified you, if you know, for this job?

21 A. I had been doing events for many years.  
22 Usually I had done it for free. I did a lot of big  
23 charitable events in San Diego for many, many  
24 years.

25 Q. As event coordinator who did you answer

1 to at James Ray International?

2 **A. Megan Fredrickson.**

3 **Q.** And do you know who Megan Fredrickson  
4 answered to?

5 **A. James Ray.**

6 **Q.** Did you meet James Ray?

7 **A. Yes.**

8 **Q.** And in your employment as event  
9 coordinator, did you work directly with James Ray?

10 **A. Yes. On occasions I did. Yes.**

11 **Q.** How many events had you served as event  
12 coordinator from the time you were hired in  
13 February -- did you say February of 2009 or 2008?

14 **A. 2009, I believe.**

15 **Q.** Okay. How many events did you coordinate  
16 between February of 2009 and Spiritual Warrior  
17 of 2009?

18 **A. I'd have to count them. And I would have**  
19 **to take the time to do that. I did all of his**  
20 **events up until that time except for the two-hour**  
21 **events that did he, which were very consistent.**  
22 **But I'd say probably one a month for that period of**  
23 **time.**

24 **Q.** Was Mr. Ray holding an event once a  
25 month?

1 **MR. KELLY:** Your Honor, I'm going to object to  
2 the form of the question. The entity is JRI, not  
3 my client.

4 **THE COURT:** Sustained.

5 **Q.** BY MS. POLK: Were there events once a  
6 month that you were coordinating?

7 **A. I wouldn't say exactly once a month**  
8 **necessarily. But it was pretty close to once a**  
9 **month.**

10 **Q.** Could you give us, then, a rough estimate  
11 of how many events you had coordinated prior to  
12 Spiritual Warrior 2009 in October.

13 **A. I coordinated all of his events except**  
14 **for two of them. So I would say -- I'd have to**  
15 **look at it to tell you exactly how many I did.**

16 **Q.** Was this a full-time job?

17 **A. Yes.**

18 **Q.** And how many employees worked at  
19 James Ray International when you worked there?

20 **A. Between -- I think around 20 people,**  
21 **thereabouts.**

22 **Q.** Did anybody answer to you?

23 **A. When we did events, the Dream Team people**  
24 **would, and the people that we hired locally did.**

25 **Q.** Can you tell me the other categories of

1 employment at James Ray International other than  
2 event coordinator?

3 **A. We had the receptionist. We had somebody**  
4 **who handled marketing. We had somebody who handled**  
5 **bill collection. We had people who did -- they'd**  
6 **crunch the numbers on the events to see where we**  
7 **were going.**

8 **And then a lot of the people were more**  
9 **working with the people themselves. Like, they**  
10 **would go to events and they would work directly**  
11 **with the people on their breakthroughs.**

12 **Q.** And those were employees of the company  
13 who would work with people on breakthroughs?

14 **A. Yes. They had two jobs. They would have**  
15 **something in the office. And then when they would**  
16 **go to the event, they would have sort of a**  
17 **different hat that they would wear.**

18 **Q.** After you got hired to work at James Ray  
19 International, did you receive any training?

20 **A. A little bit. Before each event I would**  
21 **be briefed on what was going to happen and what I**  
22 **was going to be doing. That was the training I**  
23 **received.**

24 **Q.** Who did that briefing?

25 **A. Megan.**

1 **Q.** And specifically what did you need to do  
2 to coordinate an event?

3 **A. From contacting the hotels, I would work**  
4 **with the hotel staff on the room set up, how we**  
5 **would have things. James's room. I will usually**  
6 **work with them on that. I would work with them**  
7 **on -- you know -- I would put together and work**  
8 **with the marketing department on putting together**  
9 **things that we would give out to participants. I**  
10 **would print out things for participants. I would**  
11 **organize how the layout -- how everything was going**  
12 **to flow throughout the event, things like that.**

13 **Q.** Had you attended any events put on by  
14 Mr. Ray before you were hired as event coordinator?

15 **A. No.**

16 **Q.** Were you familiar with James Ray?

17 **A. Yes. A little bit.**

18 **Q.** How were you familiar with him?

19 **A. I had used one of his CD collections**  
20 **previously. It was more business-minded. It had**  
21 **to do with -- it was called "Twenty-one Days to**  
22 **Success," -- certain coaching. I might have the**  
23 **name flipped around. But it was about business.**  
24 **It was about building a business. And I had**  
25 **listened to those.**

1 Q. Were you familiar with the teachings,  
2 then, that occurred at the various events that you  
3 coordinated before you coordinated them?

4 MR. KELLY: Objection. Lack of foundation,  
5 Judge.

6 THE COURT: That called for a yes or no  
7 response to start with.

8 So if you can answer that, you may.

9 THE WITNESS: Can you repeat the question.

10 Q. BY MS. POLK: You told the jury that you  
11 coordinated events -- several events between  
12 February and October of 2009. But you had not  
13 attended any of those events prior to being hired?

14 A. Correct.

15 Q. Were you familiar with the teachings by  
16 Mr. Ray at the various events?

17 MR. KELLY: Your Honor, same objection.

18 THE COURT: It calls for a yes or no. And  
19 then if there is further foundation that can be  
20 provided, then things can go from there.

21 But if you can answer that, Miss Martin,  
22 go ahead if you can answer yes or no. If you can't  
23 answer yes or no, you can tell the attorney that  
24 also.

25 THE WITNESS: Right. I can't answer yes or

1 no, but I can explain.

2 As I learned it -- I learned it as I was  
3 going through it, basically.

4 Q. BY MS. POLK: Let's talk about Spiritual  
5 Warrior 2009 that occurred in October of 2009.  
6 Were you the event coordinator for that seminar?

7 A. In that particular event -- and that was  
8 the only event that I was not the event coordinator  
9 on.

10 Q. And why weren't you?

11 A. Because Megan Fredrickson said she was  
12 going to be the event coordinator at that time.

13 Q. Did you attend as a staff employee of --

14 A. I did.

15 Q. You attended Spiritual Warrior 2009 as an  
16 employee?

17 A. Yes.

18 Q. What was your role?

19 A. It was the liaison between JRI and Angel  
20 Valley Resort and JRI and the participants.

21 Q. Were you familiar prior to October  
22 of 2009 with the various events that constituted  
23 Spiritual Warrior 2009?

24 A. I was briefed on it about a month and a  
25 half, I'd say, beforehand by Megan.

1 Q. Specifically what did you learn from  
2 Megan at that time?

3 MR. KELLY: Your Honor, objection. Hearsay.

4 THE COURT: Could be. Sustained.

5 Q. BY MS. POLK: Were you briefed by Megan  
6 that there would be a sweat lodge?

7 A. Yes.

8 Q. Will you tell the jury who the other  
9 employees were who attended Spiritual Warrior 2009.

10 A. Megan and Josh Fredrickson. And Greg  
11 Hartle was an employee. But he attended as a  
12 participant and not as an employee.

13 Q. How do you know that?

14 A. Because we knew that he was just  
15 attending as a participant so he can experience  
16 that event.

17 Q. Okay. What was Megan Fredrickson's  
18 title -- her employment at James Ray International?

19 A. She was director of operations.

20 Q. And what was Josh Fredrickson's title?

21 A. He was director of marketing at the time.

22 Q. Are the two of them married?

23 A. Yes.

24 Q. Any other employees of James Ray  
25 International that attended Spiritual Warrior 2009?

1 A. Well, Marta Reis wasn't really an  
2 employee, that I'm aware of. She was somebody that  
3 was employed, like a vendor. And also Michael  
4 Barber was also a vendor. But they were regular --  
5 they were regularly hired by JRI.

6 Q. Contract vendors?

7 A. Correct.

8 Q. And what about someone named Taylor  
9 Butler?

10 A. Oh. I forgot about her. She is James's  
11 personal assistant. Yes. She was there.

12 Q. Was she at the time a full-time employee  
13 of James Ray International?

14 A. Yes.

15 Q. So there were four employees of James Ray  
16 International, including you, who attended  
17 Spiritual Warrior 2009?

18 A. Yes.

19 Q. Were you familiar with what a Dream Team  
20 member was?

21 A. Yes.

22 Q. And how was it that you were familiar  
23 with Dream Teams?

24 A. We had Dream Team members that  
25 volunteered at every one of our events.

1 Q. Do you know who the Dream Team members  
2 were at Spiritual Warrior 2009?  
3 A. Yes.  
4 Q. Can you tell the jury their names?  
5 A. I can try. Jennifer Haley, Liz Neuman,  
6 Barbara Waters, Christine Jobe, Mark Rock, Aaron --  
7 I don't recall his last name.  
8 Q. Would it be Bennett?  
9 A. Yes.  
10 Who else? I can't think of the other  
11 names.  
12 Q. Was there a Lisa Rondan?  
13 A. Lisa Rondan, yes. She was there.  
14 Q. Do you know how many total Dream Team  
15 members were there?  
16 A. As many as I just mentioned plus Lisa.  
17 Q. Would that be seven?  
18 A. Yes.  
19 Q. Did you know Liz Neuman before October  
20 of 2009?  
21 A. I did not.  
22 Q. And do you know how these individuals  
23 were selected to serve as Dream Team members for  
24 this event?  
25 A. Every event people would write in to the

1 company and -- they would volunteer. And the  
2 members at JRI and Megan and a couple people in the  
3 office would review their applications, for lack of  
4 a better word. They would kind of review who the  
5 people were and what sort of qualifications they  
6 had. And they would make a choice as to who they  
7 would like to have there at the event.  
8 Q. Were you ever involved in selecting the  
9 Dream Team members for the events?  
10 A. Yes.  
11 Q. And was Mr. Ray ever involved?  
12 A. No.  
13 Q. Did you ever get training in first aid  
14 and CPR?  
15 A. I did.  
16 Q. When was that?  
17 A. A couple of months prior to Spiritual  
18 Warrior.  
19 Q. Who sent you to get training?  
20 A. Megan.  
21 Q. Did anybody else from James Ray  
22 International get training with you?  
23 A. Yes. A gal named Tanya.  
24 Q. Just you and Tanya?  
25 A. Yes.

1 Q. And did Tanya go to Spiritual  
2 Warrior 2009 in Sedona, Arizona?  
3 A. She did not.  
4 Q. What training did you receive?  
5 A. First aid and CPR.  
6 Q. Specifically what sort of first aid  
7 training?  
8 A. How to treat burns, how to treat bug  
9 bites, how to treat abrasions, how to take care of  
10 somebody -- you know -- if they were injured. And  
11 then I learned CPR.  
12 Q. Did Megan Fredrickson go to the training  
13 with you?  
14 A. No, she did not.  
15 Q. And how about Josh Fredrickson?  
16 A. No, he did not.  
17 Q. And Taylor Butler?  
18 A. No.  
19 Q. Do you know whether those three  
20 individuals had gone to training on another  
21 occasion?  
22 A. I do not know.  
23 Q. Do you know whether Megan Fredrickson had  
24 ever been trained in CPR?  
25 A. I do not know.

1 Q. During Spiritual Warrior 2009, did you  
2 ever see Megan Fredrickson performing CPR?  
3 A. No.  
4 Q. And same question for Josh Fredrickson.  
5 Do you know if he was trained in CPR?  
6 A. I do not know.  
7 Q. During Spiritual Warrior 2009, did you  
8 ever see Josh Fredrickson perform CPR?  
9 A. No.  
10 Q. And same question for Taylor Butler.  
11 A. Same answer. I did not know if they  
12 attended CPR training and did not see them.  
13 Q. What training was provided to the  
14 Dream Team members in order for them to volunteer  
15 and assist at Spiritual Warrior 2009?  
16 MR. KELLY: Your Honor, objection. Lack of  
17 foundation.  
18 THE COURT: Sustained.  
19 Q. BY MS. POLK: Do you know if any training  
20 was provided to the Dream Team members who dream  
21 teamed the Spiritual Warrior 2009 event?  
22 A. They received some instruction on the  
23 various aspects of the event.  
24 MR. KELLY: Your Honor, I'd resubmit my  
25 objection as to foundation and ask that the answer

1 be stricken until there is additional foundation.

2 THE COURT: There wasn't foundation. So  
3 sustained. And granted as to the motion.

4 Q. BY MS. POLK: Let me ask you. Do you  
5 know if they received training?

6 A. Yes.

7 Q. And how do you know that they received  
8 training?

9 A. It was part of our curriculum.

10 Q. Did any of the Dream Team members receive  
11 training at any place other than Angel Valley  
12 Retreat in order to Dream Team this event?

13 A. No.

14 Q. Where is it that they received training?

15 A. There at Angel Valley.

16 Q. Who provided the training?

17 A. Megan Fredrickson.

18 Q. And describe for the jury what the  
19 training was that they --

20 MR. KELLY: Your Honor, I'd still object as to  
21 her personal knowledge.

22 THE COURT: Sustained as to foundation.

23 Q. BY MS. POLK: Were you present when Megan  
24 Fredrickson provided training to the Dream Team  
25 members in October 2009 at the Angel Valley Retreat

1 Center?

2 A. Yes.

3 Q. And describe for the jury what training  
4 they received.

5 A. They were told about a particular aspect  
6 of the event. They were told what their role would  
7 be in facilitating that particular activity. She  
8 would explain to them what their role was in that.

9 Q. Do you know whether or not Megan  
10 Fredrickson, Mr. Ray, or James Ray International  
11 ever assessed the technical skills of any of the  
12 Dream Team members to dream team Spiritual  
13 Warrior 2009?

14 MR. KELLY: Your Honor, may I object. It's a  
15 compound question.

16 THE COURT: Overruled.

17 And, again, that question would call for  
18 a yes or no response. If you can do that or if you  
19 can't, let the attorney know that.

20 THE WITNESS: Would you like to repeat the  
21 question, please.

22 Q. BY MS. POLK: To your knowledge, were the  
23 technical skills of the Dream Team members ever  
24 assessed or evaluated by Mr. Ray, Megan  
25 Fredrickson, or James Ray International?

1 A. To a certain extent, yes.

2 Q. And when did that happen?

3 MR. KELLY: Your Honor, I'm going to object.

4 Lack of foundation. It's a compound question which  
5 is of the other three entities.

6 THE COURT: True. Sustained.

7 Q. BY MS. POLK: Who assessed the technical  
8 skills, to your knowledge, of the Dream Team  
9 members?

10 A. The people at the office prior to the  
11 event.

12 Q. Who were the people at the office?

13 A. The people who have been to the different  
14 events. It would be Megan. It would be Michelle  
15 Goulet, Sheryl Stern, different people who have  
16 worked with various team members, Tina. They would  
17 say what their experience is in working with those  
18 different -- those people.

19 They would say, oh. She was easy to work  
20 with or she wasn't easy to work with. Then they  
21 would make their selections based on previous  
22 experience working with them.

23 Q. Do you know what the basis was for  
24 selecting Dream Team members? You just said she  
25 was easy work with, she wasn't easy to work with.

1 Do you know what the basis was for the decision to  
2 select and bring on the Dream Team members?

3 A. That was the main criteria.

4 MR. KELLY: Your Honor, object to the  
5 response. It's nonresponsive, called for yes or  
6 no.

7 THE COURT: Indeed it did.

8 So if you can answer that, Miss Martin,  
9 as a yes or no, please do so in that fashion.

10 THE WITNESS: Okay. Then you will have to ask  
11 me again, please.

12 Q. BY MS. POLK: Okay. Do you know what the  
13 basis for the criteria was to identify a Dream Team  
14 member?

15 A. Yes.

16 Q. And what was it?

17 A. How easy they were to work with in the  
18 past.

19 Q. Do you know if anybody from James Ray  
20 International, Megan Fredrickson, or Mr. Ray ever  
21 assessed the skills of these volunteers to serve as  
22 a Dream Team member?

23 MR. KELLY: Your Honor, I'm going to object.  
24 Lack of foundation. My client was never involved  
25 in the assessment given her answer.

1 THE COURT: Well, the question covers a lot of  
2 ground. It can be answered yes or no, and then the  
3 specifics can be covered.

4 Once again, if that general question can  
5 be answered yes or no and it's got several  
6 components, then, Miss Martin, you may do that.

7 Q. BY MS. POLK: And the question is, do you  
8 know if their technical skills were ever assessed  
9 or evaluated?

10 A. **To a certain extent, yes.**

11 Q. How do you know that?

12 A. **That was the meeting that we held about  
13 the Dream Team selection.**

14 Q. And this is a meeting back at the  
15 offices?

16 A. **Correct.**

17 Q. Do you know if anybody ever -- this is do  
18 you know. Was it a criteria that a Dream Team  
19 member, for example, know how to do CPR in order to  
20 be brought on as a volunteer for Spiritual  
21 Warrior 2009?

22 A. **No.**

23 Q. That was never a criteria?

24 A. **No.**

25 Q. Was it a criteria that the volunteer have

1 first-aid training?

2 A. **No.**

3 Q. Was it a criteria that the Dream Team --

4 MR. KELLY: Your Honor, I object. Leading. I  
5 Object on the basis of relevance, ask that the last  
6 three questions and answers be stricken.

7 THE COURT: I'm going to sustain the objection  
8 to the current question. It's a leading question.  
9 Sustained on that.

10 MR. KELLY: Your Honor, also in regards to  
11 relevance, Judge, these are questions directed  
12 towards the responsibilities of JRI, not my client,  
13 in this case.

14 THE COURT: You may -- I've made the ruling on  
15 the one question. That was sustained.

16 And you may proceed, Ms. Polk.

17 MS. POLK: Thank you, Your Honor.

18 Q. Do you know -- this is a yes or no. Do  
19 you know, Miss Martin, whether or not the  
20 Dream Team members ever received first-aid training  
21 prior to volunteering at Spiritual Warrior 2009?

22 A. **No.**

23 Q. You do not know?

24 A. **I do not know.**

25 Q. Do you know whether or not that training

1 was ever provided during the days of the event  
2 itself to the Dream Team members?

3 MR. KELLY: Your Honor, objection. Relevance.

4 THE COURT: Overruled.

5 THE WITNESS: They did not provide that  
6 training.

7 Q. BY MS. POLK: Okay. Specifically were  
8 you present when Dream Team members were trained  
9 during the event itself on site at Angel Valley?

10 A. **Yes.**

11 Q. Were you present for all of the training  
12 sessions?

13 A. **No.**

14 Q. How many were you present for?

15 A. **I'm not sure.**

16 Q. When would the training sessions occur?

17 A. **There was an overall briefing in the  
18 beginning, which I was there for. And then prior  
19 to each activity, there would be a gathering  
20 together of the Dream Team members and Megan, and  
21 she would brief them once again as to their  
22 responsibilities.**

23 Q. In the process of -- when Megan  
24 Fredrickson would brief the volunteer Dream Team  
25 members about their responsibilities, was there

1 actual training or just briefing about what the  
2 expectations were?

3 A. **Briefing on expectations.**

4 MR. KELLY: Objection. Again, foundation.

5 THE COURT: Counsel, sustained as to the form  
6 of the question.

7 Q. BY MS. POLK: What did the briefing  
8 entail?

9 A. **An explanation of the activity and a  
10 description of how they were going to be  
11 participating in that activity or expediting the  
12 activity.**

13 Q. Miss Martin, I'm going to approach and  
14 hand you Exhibit 253 and ask if you recognize that  
15 document?

16 A. **Yes.**

17 Q. What do you recognize that document to  
18 be?

19 A. **It's our syntax.**

20 Q. Explain to the jury what that word  
21 means -- "syntax."

22 A. **It's a timeline of what happens when, for  
23 how long, and what takes place. So it's sort of a  
24 guideline of -- as to what activities we're going  
25 to be doing.**

1 Q. This document has some handwritten notes  
2 on them. Do you know whose handwriting that is?

3 A. Yes.

4 Q. Whose?

5 A. Megan.

6 Q. Did you receive a copy of the syntax for  
7 Spiritual Warrior 2009?

8 A. Yes.

9 Q. Did it come with the handwritten notes on  
10 it?

11 A. No.

12 Q. Do you know how this document was  
13 created?

14 A. Yes. It was created in our office.

15 Q. Did you have a hand in creating it?

16 A. Yes. To a certain extent.

17 Q. And I just put it up on the overhead so I  
18 can ask you generally -- I don't know if we can  
19 read it. We have Spiritual Warrior. It says,  
20 October 3rd to the 8th, 2009, Sedona, Arizona. And  
21 then it says, pre-event Thursday, October 1st,  
22 2009. Uniform, dress as you wish.

23 When did you arrive to Angel Valley in  
24 Sedona, Arizona?

25 A. I believe I arrived on that day,

1 Thursday, October the 1st.

2 Q. Do you recall what day the event began  
3 for the participants?

4 A. It was a day or two later. In looking at  
5 the syntax, I'd be able to answer that.

6 Q. Was a syntax something you were familiar  
7 with before you gained employment with James Ray  
8 International?

9 A. No. Before I gained employment?

10 Q. Yes.

11 A. No. That was something that we developed  
12 within the company.

13 Q. And is that something that you had a hand  
14 in developing, or did it exist before you took  
15 employment there?

16 A. It existed. And then I had a hand in it  
17 once I was there.

18 Q. Who was the syntax given to? Do you  
19 know?

20 A. Yes. It was given to JRI team members as  
21 well as Dream Team members.

22 Q. And specifically for the Spiritual  
23 Warrior event?

24 A. Yes.

25 Q. And were there activities on Thursday,

1 October 3rd; Friday, October 2; Saturday,  
2 October 3rd, before the participants arrived?

3 A. Before the -- yes.

4 Q. At any time before participants arrived,  
5 was there a discussion -- did you ever participate  
6 in a discussion about safety measures to follow for  
7 the Spiritual Warrior event?

8 A. No. Not safety.

9 Q. And at any time did you ever participate  
10 in a discussion with Dream Team members about  
11 safety measures to follow for the week in order to  
12 keep participants safe?

13 A. I don't recall any safety measurements  
14 being discussed.

15 Q. Are you familiar with whether the events  
16 of the week were audio recorded?

17 A. Most of our events were audio recorded.

18 Q. Who did the audio recordings?

19 A. Usually anybody working with the  
20 audiovisual. So in this case I believe it was Josh  
21 or Michael Barber.

22 Q. And you told us earlier Michael Barber  
23 was a vendor?

24 A. Yes.

25 Q. For this specific event, Spiritual

1 Warrior 2009, were some of the events not  
2 recorded -- some of the activities not recorded?

3 A. Yes.

4 Q. Do you know what activities were recorded  
5 and which ones were not?

6 A. No.

7 Q. Do you know what determined what got  
8 recorded and what did not get recorded?

9 A. No.

10 Q. Were certain locations recorded, for  
11 example, the activities in the Crystal Hall?

12 A. Oh. I wasn't 100 percent aware if it was  
13 recorded. It was just general practice of the  
14 company to record the seminar portions of events.

15 Q. And what do you mean the by "the seminar  
16 portions"?

17 A. The portions that would take place where  
18 James would speak to everyone at length.

19 Q. Do you know whether or not the sweat  
20 lodge ceremony performed by Mr. Ray on October 8  
21 of 2009 -- was that audio recorded?

22 A. I do not know.

23 Q. Do you believe that it was?

24 A. I don't. I would not think so.

25 MR. KELLY: Your Honor, objection.

1 THE COURT: Sustained.

2 Q. BY MS. POLK: Did you see any  
3 audio-recording equipment down around the sweat  
4 lodge on that Thursday?

5 A. No.

6 Q. We've heard testimony about a  
7 head-shaving activity that occurred on Sunday  
8 evening. Were you present for that?

9 MR. KELLY: Your Honor, objection to the form  
10 of the question.

11 THE WITNESS: Yes.

12 THE COURT: Overruled. The answer will stand.

13 Q. BY MS. POLK: Yes. You were present for  
14 the head-shaving activity?

15 MR. KELLY: Your Honor, objection to the  
16 characterization "head shaving." There were  
17 haircuts.

18 THE COURT: Sustained as to form.

19 Q. BY MS. POLK: You were present for the  
20 that activity?

21 A. Yes.

22 Q. Were these haircuts or head shavings?

23 A. **The first day was head shaving.**

24 Q. Tell the jury how long the head shaving  
25 activity lasted for, if you know.

1 A. **I couldn't tell you a specific time.**

2 Q. Were you present when participants had  
3 their heads shaved?

4 A. Yes.

5 Q. Do you recall about how many had their  
6 heads shaved on the first day?

7 A. Many.

8 Q. Did Mr. Ray shave his head?

9 A. No.

10 Q. Did you know two sisters named Simone and  
11 so Soheyla Marzvaan?

12 A. Yes.

13 Q. How did you know them?

14 A. **I knew them just the fact that they were**  
15 **participants.**

16 Q. You met them that week?

17 A. Yes.

18 Q. And do you know where the Marzvaan  
19 sisters were from?

20 A. **I would have to guess. I thought they**  
21 **told me --**

22 MR. KELLY: Your Honor, objection.

23 THE COURT: Sustained.

24 Q. BY MS. POLK: You don't need to guess if  
25 you don't know.

1 A. **Okay.**

2 Q. Did you become aware of the Marzvaan  
3 sisters at some point during Spiritual  
4 Warrior 2009?

5 A. Yes.

6 Q. Tell the jury what made you become aware  
7 of them.

8 A. **There was a problem with one of them.**  
9 **They wanted to leave.**

10 Q. Do you recall what day that was that  
11 there was a problem?

12 A. **It was the day of the Samurai Game.**

13 Q. Do you recall what day that was?

14 A. No.

15 Q. Does Tuesday sound right for you for the  
16 Samurai Game? Or I could actually -- I'll give you  
17 the syntax.

18 A. **The syntax. Yes.**

19 **So it would be Tuesday, October 6.**

20 MR. KELLY: Judge, I'd ask the record reflect  
21 that the witness refreshed her recollection with  
22 Exhibit 253.

23 THE COURT: I think that was the case,  
24 Ms. Polk.

25 MS. POLK: Yes, Your Honor.

1 Q. Do you recall what time of the day there  
2 was a problem?

3 A. **It was in the evening.**

4 Q. And where were you when you became aware  
5 of a problem?

6 A. **I was there in the Crystal Hall.**

7 Q. And you've used the word "problem." What  
8 was the issue?

9 MR. KELLY: Your Honor, objection. Requires a  
10 hearsay response.

11 THE COURT: Is it offered for the truth,  
12 Ms. Polk?

13 MS. POLK: Your Honor, I'll rephrase the  
14 question.

15 THE COURT: Okay.

16 Q. BY MS. POLK: What did you become aware  
17 of?

18 A. **I became aware that one of the girls**  
19 **wanted to leave. She was uncomfortable.**

20 MR. KELLY: Your Honor, objection. Strike  
21 anything after "leave."

22 THE COURT: The answer "wanted to leave."  
23 That's not offered for the truth?

24 MS. POLK: No, Your Honor. It's foundational.

25 THE COURT: Okay. So you may ask a question.

1 It's in evidence up to that point, not further.

2 But you may ask another question.

3 Q. BY MS. POLK: You just used the word --  
4 the term "girls." Do you recall approximately how  
5 old the Marzvaan sisters were?

6 A. No.

7 Q. Were they girls? Were they women?

8 A. They were female.

9 Q. So they were female?

10 A. Yeah.

11 Q. What drew your attention to the sister?

12 A. She was upset.

13 Q. And what was she doing that makes you  
14 testify that she was upset?

15 A. She told me --

16 MR. KELLY: Your Honor, objection.

17 THE COURT: I'm going to sustain that.

18 It has been 90 minutes, Ms. Polk and  
19 Mr. Kelly. We started at a quarter after. So we  
20 do need to take a recess for the evening.

21 MS. POLK: Okay.

22 MR. KELLY: I agree, Your Honor.

23 THE COURT: So, ladies and gentlemen, we will  
24 do that. And remember the admonition, all aspects  
25 of it.

1 I do want to speak with Miss Martin for a  
2 minute about the rule of exclusion of witnesses  
3 that's been invoked in this case. And first thing  
4 it means is that other witnesses can't be present  
5 in court when witnesses are testifying. But it  
6 also means that you cannot communicate about the  
7 case or your testimony with any other witness until  
8 it's -- until the trial is completely over.

9 And I'm also asking and directing people  
10 not to communicate with third parties who might  
11 relay information on about testimony in the case.  
12 It's really a good idea not to talk to anyone about  
13 the case until the matter is completely over.  
14 However, you can talk to the lawyers as long as  
15 other witnesses are not present.

16 Do you understand?

17 THE WITNESS: Yes.

18 THE COURT: Thank you.

19 So we will take the evening recess, then.

20 Please reassemble at 9:15. We'll start  
21 as soon as we can after that.

22 We are in recess. Thank you.

23

24 (The proceedings concluded.)

25

1 STATE OF ARIZONA )  
2 COUNTY OF YAVAPAI ) ss: REPORTER'S CERTIFICATE

3  
4 I, Mina G Hunt, do hereby certify that I  
5 am a Certified Reporter within the State of Arizona  
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings  
8 were taken in shorthand by me at the time and place  
9 herein set forth, and were thereafter reduced to  
10 typewritten form, and that the foregoing  
11 constitutes a true and correct transcript.

12 I further certify that I am not related  
13 to, employed by, nor of counsel for any of the  
14 parties or attorneys herein, nor otherwise  
15 interested in the result of the within action.

16 In witness whereof, I have affixed my  
17 signature this 1st day of April, 2011.

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MINA G. HUNT, AZ CR No. 50619  
CA CSR No. 8335

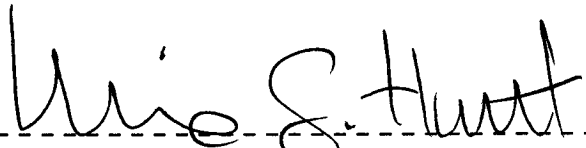
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